

# LECTURES ON NATURAL RIGHT

A course given in the Autumn quarter, 1962

in the

Department of Political Science

The University of Chicago

by

Professor Leo Strauss

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**NATURAL RIGHT:** Lecture course by Professor Leo Strauss, Chicago, Illinois, Autumn 1962. (Note: Dr. Strauss divided this course as follows: (1) Four lectures on positivism and historicism, an examination of the most powerful prejudices against an unbiased consideration of the question of natural right; (2) Eight lectures on ancient and medieval political philosophy; (3) Four lectures on modern political philosophy. Part one consisted of material that Dr. Strauss has dealt with before either in class or in print in substantially the same manner as well as some new material. Only this new material will be reproduced in the following transcript. Dr. Strauss handled the second part of the course differently from earlier treatments and this will be reproduced in full. Finally, the third part will not be reproduced since it represents substantially the same treatment of modern political philosophy that has appeared in Dr. Strauss' writings and lectures.)

Lecture 1, October 1, 1962 -- in part

Now -- to begin now with my critical remarks, I take as my basis this time a very well known text book of positivism, Ernest Nagel, The Structure of Science: Problems in the Logic of Scientific Explanation (1961). So I think that is up to date. Now Nagel takes here issue with certain propositions which I have made and which I have to read to you in Nagel's quotation. The point here is this. The fact-value distinction implies that the social scientist as social scientist may not make any value judgments and I asserted against that that this is absolutely impossible. It is possible to make some merely factual judgments, for example, Mr. Miller weighs 170 pounds -- that is a factual judgment, I take it and there are other factual judgments possible -- there are so and so many "juvenile delinquents in a city," because juvenile delinquents must not be taken as a value judgment, otherwise it's faulty, but you can count at any rate. Now I say, granting that it is possible to make a large number of factual, merely factual, judgments you cannot nail down social science on the proposition that it is not permitted to make any value judgment because that leads to sheer nonsense. And I read now what I said and what Nagel quotes: "Would one not laugh out of court a man who claimed to have written a sociology of art but who actually had written a sociology of trash? The sociologist of religion must distinguish between phenomena which have a religious character and phenomena which are a-religious." For example, buying a shirt. "To be able to do this he must understand what religion is. Such understanding enables and forces him to distinguish between genuine and spurious religions, between higher and lower religions. Those religions are higher in which the specifically religious motivations are effective to a higher degree. The sociologist of religion cannot help noting the difference between those who try -- " well, he didn't quote it correctly -- who try to win the favor of a god or gods by change of heart and those who try to do it, gain it, by some bribery. "Can he see this difference without seeing at the same time the difference between a mercenary and a non-mercenary attitude?" Value implied in the terms mercenary and non-mercenary. "The prohibition against value judgments in social science would lead to the consequence that we are permitted to give a strictly factual description of the overt acts that can be observed in concentration camps, and perhaps an equally factual analysis of the motivations of the actors concerned; we would not be permitted to speak of cruelty. Every reader of such a description who is not completely stupid -- " I mean who can see through these technical terms -- "would, of course, see that the actions described are cruel. The factual description would in truth be a bitter satire -- " because the simple expression,

cruelty, is avoided. "What claimed to be a straightforward report would be an unusually circumlocutory report. Can one say anything relevant on public opinion polls without realizing the fact that many answers to the questionnaires are given by unintelligent, uninformed, deceitful, and irrational people, and that not a few questions are formulated by people of the same caliber -- can one say anything relevant about public opinion polls without committing one value judgment after another?" Or to take a very simple case, everyone who has any political understanding is, sooner or later, driven to admit that it is necessary to make a distinction between politicians and statesmen, as a factual distinction; and yet it is obviously a value distinction. Or take any little example: for example; when people, even opponents of President Roosevelt, spoke of his radio voice, which was said -- you are too young for that, you know -- then that was a value judgment. I mean, it is a very arbitrary distinction.

Now what does Nagel say to this point? In brief, he makes a distinction between two -- he admits it, that it's necessary, but he says there is a distinction -- we must make a distinction between two kinds of value judgments: characterizing value judgments and appraising value judgments. For example, a biologist even is compelled to say, "This animal suffers from anemia." Anemia is understood to be a defective state, i.e. value judgment, but by this I do not mean at all, if I say this as a biologist, that it is undesirable for a given animal to continue being anemic. In other words, I can state it without it becoming in any way relevant for my action. Only in the latter case would it be a value judgment proper. I cannot read everything but let me read you one point. "The sociologist who claims that a certain attitude manifested by a given religious group is mercenary, just as the physiologist who claims that a certain individual is anemic, is making what is primarily a characterizing value judgment. In making these judgments neither the sociologist nor the physiologist is necessarily committing himself to any values other than the values of scientific probity, and in this respect, therefore, there appears to be no difference between social and biological or, for that matter, physical inquiry."

Now what does this mean? In the first place -- now he admits that biologists too must make value judgments. Well, take a simple thing: this animal is sick or this is blind. It limps -- whatever. They are values; we characterize it as defective in one way or the other. So the fact that biologists must make value judgments shows that value judgments are compatible with science. Well, I have nothing against that. It shows not that the social scientist may not make value judgments, but that the fact-value distinction is not even tenable, say, in biology. Now what does this distinction which Nagel proposes between characterizing and appraising value judgments mean? It merely means that in most cases we are indifferent to the fact that something is defective in one way or the other. Say, I find this rat is blind and I do not care. I may even find -- I mean, regarding human beings -- or I may be prevented from caring. For example, if someone would make the value judgment, say, Nehru is a hypocrite because of his behavior in the Goa question, this is wholly irrelevant from the question whether you can do anything about it. In most cases our value judgments, if we use that way, do not affect our actions. So this is a very uninteresting distinction. It is irrelevant.

I read to you another passage. "It would be absurd to deny that in characterizing various actions as mercenary, cruel, or deceitful, sociologists are frequently, although perhaps not always wittingly, asserting appraising as well as characterizing value judgments." In other words, they are not merely saying "this is a swindler," but also "I don't like swindlers" because, after all, it



is possible that someone might say a swindler is indeed, surely, a defective man in some respects but I can get along with them fine. "Terms like mercenary, cruel, or deceitful, as commonly used, have a widely recognized perjorative overtone." I should say so. "Accordingly, anyone who employs such terms to characterize human behavior can normally be assumed to be stating his disapprobation of that behavior and not simply characterizing it. However, although many but certainly not all ostensibly characterizing statements asserted by social scientists undoubtedly express commitments to various not always compatible values, a number of purely descriptive terms, as used by natural scientists in certain contexts sometimes also have an unmistakably appraising value connotation."

It seems to me that he grants everything here -- what I have asserted. But let us see how he continues. "Thus the claim that a social scientist is making appraising value judgments when he characterizes respondents to questionnaires as uninformed, deceitful, or irrational, can be matched by the equally sound claim that the physicist is also making such judgments when he describes a particular chronometer as inaccurate, a pump as inefficient, or a supporting platform as unsteady. Like the social scientist in this example, the physicist is characterizing certain objects in his field of research, but also like the social scientist he is, in addition, expressing his disapproval of the characteristics he is ascribing to those objects." Now you see again one could immediately say this: what follows from that is only that -- if we take the facts as he states them -- that the natural consequence is that the fact-value distinction is not even tenable in physics. I would not draw this inference from this example for the very simple reason: the physicist spoken of here does not appraise the primary objects of physics, say atoms or elements of atoms. He is speaking here of artifacts like a pump, like a platform, things which were designed for a purpose, and you cannot say that of an atom but of a platform or of a pump you must say it. Being designed for a purpose, they are meant, they call, as it were, for being judged in terms of whether they fulfill or do not fulfill their purpose. A broken chair is objectively a defective chair because a chair is produced for sitting on it and if you cannot sit on it for a variety of reasons, one leg missing or something else, then it is a deficient chair. This is perfectly compatible with the fact that some people, some whimsical people, may love broken chairs in their homes just to look at, especially when they are very old or perhaps have been made by a famous chair-maker. This is another limiting and qualifying consideration which is, of course, always possible. Or one may simply cherish a broken chair because one has already had it for some generations in one's family.

"Nevertheless" -- I'm sorry I have to read this to you -- and this is the main burden of the present discussion -- "there are no good reasons for thinking that it is inherently impossible to distinguish between the characterizing and the appraising judgments implicit in many statements, whether the statements are asserted by students of human affairs or by natural scientists. To be sure, it is not always easy to make the distinction formally explicit in the social sciences, in part because much of the language employed in them is very vague" -- for example, honors, -- "in part because appraising judgments that may be implicit in a statement tend to be overlooked by us when they are judgments to which we are actually committed though without being aware of our commitments. Nor is it always useful or convenient to perform this task for many statements implicitly containing both characterizing and appraising evaluations are sometimes sufficiently clear without being reformulated in the manner required by the task." Notice this difference: the terms are very vague but they are sufficiently clear. Do they become clearer by making the terms very exact



or do the terms cease to be clear -- do the statements cease to be clear when the terms are made exact? Everyone who has ever read a social science analysis of a phenomenon which he knew from daily life will understand what I mean. "And the re-formulations would frequently be too unwieldy for effective communications between members of a large and unequally prepared group of students. But these are essentially practical rather than theoretical problems. The difficulties they raise provide no compelling reason for the claim that an ethically neutral social science is inherently impossible." To which I would say: it is possible, to some extent, to distinguish between facts and values, but it is very difficult. The terms employed by social science are very vague and yet the statements embodying them are sufficiently clear. I can only repeat that. Let me see: there is one more passage. Yes, this refers to a related subject. Permit me to read it to you without indicating the connection for the time being.

He speaks of a school in social science called the sociology of knowledge which asserts that there is no possibility of a theoretical view in any form of science which is not bound to some social group and hence to some specific value system. In other words, sociology of knowledge is a kind of historicism, to state it simply. "Even extreme exponents of the sociology of knowledge admit that most conclusions asserted in mathematics and natural science are neutral to differences in social perspective of those asserting the same." In other words, a mathematician who is the son of a shoemaker and a mathematician who is the son of a President of the United States: this is wholly irrelevant in mathematics and in physics. So in this case the genesis of these propositions, social genesis, is irrelevant to their validity. "Why cannot propositions about human affairs exhibit a similar neutrality" -- and now comes the remarkable thing -- "at least in some cases?" Now if it can do it in some cases and maybe those are all uninteresting cases, it would be finished. This is an extremely crucial but layman mission. "Sociologists of knowledge do not appear to doubt that the truth of the statement that two horses can, in general, pull a heavier load than can either horse alone is logically independent of the social status of the individual who happens to affirm the statement. But they have not made clear just what are the inescapable considerations that allegedly make such independence inherently impossible for the analogous statement about human behavior that two laborers can, in general, dig a ditch of given dimensions more quickly than can either laborer working alone." Again it amounts to this: there are -- the attempt to show that there are -- it is possible in social science to have statements which are value free like this statement about the two laborers. No one ever denied that. But the question with which we are concerned is that -- whether social science, as the intelligent study of human society, is possible on the basis of a universal prohibition against value judgments; and this point is never properly met, it seems to me.

Now what is the ground of this difficulty? We have seen that in a way Nagel gave the show away when he tried to refute the contention which some others and I have made by saying even physicists make value judgments, which, it seems to me, leads to the conclusion that -- to repeat -- that the distinction between facts and value judgments is not tenable even in physics. In fact, he did not prove it because the examples he gave from physics, as distinguished from biology, dealt with artifacts; not with physical objects proper such as atoms and similar things. Now why is, then, the distinction between facts and values in principle impossible in the social sciences? And one can say this: the example of artifacts is helpful. Social institutions are human contrivances made by man for some purpose. They call, by their being, for judgment in terms of the purpose which they serve.

More generally stated, and this goes beyond that, if you take a broken chair -- that's a fact, "is," belongs to the sphere of the "is" -- as broken it points to a healthy chair, to an entire, whole chair. Is this not universally true: that the "is" points to the "ought," that the facts point to the values, if we use this, in my opinion, inadequate terminology. Let us take the broadest and most general example. Anyone who talks about facts and values is compelled to tell us what a fact is and what a value is. I mean, this would be absolutely disgraceful for a scientific man who bases his whole scientific orientation on the distinction between facts and values if he could not tell us what a fact, on the one hand, and a value, on the other, is. These questions -- what is a fact? -- what is a value? -- are, according to this orientation, factual questions. We must be able to answer them. Now what is a value? It's very hard to find an answer to this simple question, although they talk so much about values. A value, if you infer a definition from usage in this kind of literature, you see on the one hand a value may mean anything desired -- for example, this cigarette, if I desire it, this cigarette here. Literally anything may be a value because there is absolutely nothing, not the most despicable and nauseating things, which are not sometimes desired, perhaps by insane people. So anything can be a value in this sense. But there is also another meaning discernible where it does not mean the things valued but the principles of evaluation. For example, someone may desire an apple for the pleasure or another may desire it for taste. Another may desire it for profit: namely, he wants to sell it. Or he may desire it as the model for a painter. Infinite. But still there is a variety of principles of preference and this is also what they sometimes understand by value. So only the second sense is of any interest, it seems to me, because the first is simply vague and useless.

Now what is it that constitutes a value in all these cases? According to one view, the desire for the thing, whatever the principle may be, whether it is health or profit or whatever it is. But if a man desires something and yet disapproves of that desire, loathes that desire, despises himself for that desire, regardless of whether he succeeds in suppressing the desire or not can this desire still be said to be his value? This is still a factual question. Is this a value or is this not a value? The two answers which are possible, it is a value or it is not a value, are equally factual because of the factual character of the question. The factual question is this: is there or is there not an essential difference between desire and choice? I mean, desire -- anything you desire even if you hate yourself for desiring it, fight your desire, still you desire it. And choice means what you truly decide in favor of. Now the first view, the view that desire is the thing which constitutes value, is characterized by blindness to that obvious difference and necessary difference between desire and choice. On factual grounds, we are compelled to say that a value is an object of choice as distinguished from mere desire. This means that the different views of the "is" -- is there or is there not an essential difference between desire and choice -- lead to different views of the "ought" or of the values. By this argument, indeed, you arrive only at a formal characteristic, very general characteristics. For example, if someone has a desire, say, for drugs, according to one view this would be his values, drug addiction, but from a more perceptive view one would say, of course there is no value because there is no choice; this man has not even the possibility to reflect and to resist. How can you call this a value? The factual question regarding the existence or non-existence of a difference between desire and choice decides the question of what kind of things are and are not values: a value judgment. It is inseparable. The "is," i.e. the pertinent "is" -- pertinent: for example, such phenomena as desire and choice -- that "is" which is relevant to values or



evaluation and is not neutral regarding values. A broader view would say this: that the pertinent "is" is not only desire and choice discussed in this abstractness, but the nature of man. If you take the nature of man as a whole you cannot have a view of the nature of man, a theoretical view of the nature of man, without having already by this fact decided in a general way as to what is good and bad. The simple evidence which the distinction between facts and values, is and ought, seems to have is this -- and you could easily see this when reading Max Weber, for example. You find a factual statement, this and this political party or religious party is stronger than the other parties, it is likely to win out; hence, it should win out. You know, there are people, very vulgar people, but their thought is very powerful and especially powerful in the nineteenth century in connection with the belief in progress, who really thought, if I know the future -- say, the social future -- then I know what I have to choose. In former times I think even very simple people would have said this is utterly irrelevant, what the future -- the future may bring the destruction of everything I regard as valuable and to jump on the bandwagon may be very shrewd politics but it is surely not decent choice. But given the belief in progress in the nineteenth century, given the fact that the distinction between good and bad had been replaced in fact by the distinction between progressive and reactionary, took the place of moral orientation. Confronted with this state of affairs, what Weber meant made some sense. This kind of "is," trends of development and so, they cannot tell you anything about what you should do; surely not. But this was not the "is" which the earlier social thinkers had in mind, which "is" was supposed to give them guidance about human life. This "is" in its complete form in older times was the notion of the nature of man, but you can take such a very narrow example as I propounded today, the distinction between desire and choice, to get some provisional understanding of that.

Now I have to take up one more point and then I will see whether we have reached some understanding. In the beginning of this book Nagel discusses the question of science in general and this we must, indeed, do here even in this very provisional survey. The fact-value distinction may be the most important distinction, within the social sciences at any rate, but it is, so to say, an intra-scientific distinction and we have to take that whole science within which it occurs. Now science is surely a human pursuit and a distinctive human pursuit. It is common to distinguish science, for example, from art, from religion, from politics, and so on. Science is understood to be quest for knowledge. Now it is clear that knowledge and quest for knowledge is not limited to science, but it occurs also in ordinary life. We speak of common sense knowledge in contra-distinction to scientific knowledge, and Nagel does the same. The question then arises if we want to understand science, what is the relation of science to common sense knowledge?

Now the points which Nagel makes are quite reasonable, as far as it goes. He refers, for example, to the formula, the sciences are simply organized or classified common sense, but shows that this is not quite adequate. He says, for example, that science supplies trustworthy explanations of a general character whereas common sense knowledge does this less or not at all. I must say the statements of Nagel about this subject are more sober than those you hear sometimes in social science. He admits that common sense knowledge is not simply nonsense but, of course, measured by the standard of scientific knowledge, decisively defective. For example, common sense rests on hasty generalizations. Where a scientist would only say, "On the basis of what we hitherto know it is probably so," common sense simply says "a" is the cause of "b," etc. He also



mentions the fact that common sense frequently contradicts itself. He naturally refers to the imprecision or laxity of common sense language. He also -- this is perhaps a bit more important for our purposes --

(Change of tape. Tape resumes during reading of a passage from Nagel).

"While common sense knowledge is largely concerned with the impact of events upon matters of special value to men; theoretical science is in general not so provincial." Common sense knowledge, we may say, is anthropocentric; science tries to overcome that. "Duplicity in the contrast between modern science and common sense is the important difference that derives from the deliberate policy of science to expose its cognitive claims to the repeated challenge of critically probative observational data procured under carefully controlled conditions which, indeed, in ordinary life we do not do." I draw your attention to one word which occurred here: he says "the contrast between modern science and common sense." We'll come to that immediately. A last quotation from this context: "If the conclusions of science are the products of inquiries conducted in accordance with a definite policy for obtaining and possessing evidence the rationale for confidence in these conclusions as warranted must be based on the merits of that policy. It must be admitted that the canons for assessing evidence which define the policy have at best been explicitly codified only in part and operate, in the main, only as intellectual habits manifested by competent investigators in the conduct of their inquiries, but despite this fact" -- in other words, the lack of theoretical clarity regarding the fundamentals -- "the historical record of what has been achieved by this policy in the way of dependable and systematically ordered knowledge leaves little room for serious doubt concerning the superiority of the policy over alternatives to it."

Now let me try to explain that. Men cannot live -- I mean, I'll try to explain it more simply than Nagel does it because it seems to me that he takes too many things for granted. Nagel seems to start from the fact that man cannot live without seeking for causes. I believe if you look at yourself in your daily life, you don't have to be a scientist in any sense but very frequently you are compelled to seek for a cause. For example, you have less money on your banking account than you hoped. Why? Why? That is a cause. And in other, perhaps graver, things. Now this quest for the causes reaches its highest perfection in science, in modern science. This quest is based on the principle of causality: nothing happens without a cause, to use the very simple formula for that. The simplest man who has never come across any science or something of this kind will admit this, even if he had never heard it before. He will say of course nothing happens without a cause; there must have been some reason why this horse ran away or this field did not produce the expected food, or whatever it may be. Now the key question, therefore, is what is the cognitive status of the principle of causality by which the whole scientific enterprise stands and falls. Now let us address this question to Nagel.

A long discussion on causality -- "What is the upshot of this discussion of the logical status of the principle of causality? Is the principle an empirical generalization," meaning you have seen it a number of times that events had causes and then you assume there will always be causes -- empirical generalization -- "a priori truth," -- that is hard to explain but let us say something which is of absolute inner evident necessity -- "a concealed definition, a convention that may be accepted or not as one pleases?" This is the question. "The view that the principle is an empirical generalization is difficult to maintain, for when the principle is formulated in a fully general way. . . ."

That is too technical. Well, the very simple reason why it is impossible is this: from the fact that it has happened hitherto, the mere fact that it has always happened hitherto, no conclusion is possible regarding the future, unless you bring in the principle of causality in a hidden way. The principle -- that is his conclusion -- is a maxim. If the principle is a maxim is it a rule that may be followed or ignored at will? Is it merely an arbitrary matter what general goals are pursued by theoretical science in its development? "It is undoubtedly only a contingent historical fact that the enterprise known as science does aim at achieving the type of explanations prescribed by the principle of causality," as hitherto defined by him. "For it is logically possible that in their efforts at mastering their environments men might have aimed at something quite different. Accordingly, the goals men adopt in the pursuit of knowledge are logically arbitrary." In other words, we could have followed an entirely different principle than the principle of causality as interpreted by modern science. "Nevertheless, the actual pursuit of theoretical science in modern times is directed toward certain goals, one of which is formulated by the principle of causality. Indeed, the phrase theoretical science appears to be so generally used that an enterprise not controlled by those objectives would presumably not be subsumed under this label. It is at least plausible to claim, therefore, that the acceptance of the principle of causality as a maxim of inquiry is an analytical consequence of what is commonly meant by theoretical science. In any event, one can readily grant that when the principle assumes a special form so that it prescribes the adoption of a particular type of that description by every theory, the principle might be abandoned in various areas of investigation. But it is difficult to understand how it would be possible for modern theoretical science to surrender the general ideal expressed by the principle without becoming thereby transformed into something incomparably different from what that enterprise actually is." Now what does this mean?

There is no logical necessity to accept the principle of causality. It is logically contingent, as he says. Men may engage in an entirely different kind of inquiry or musing or what it may be about nature. That is logically as sensible as the other. The principle of causality is historically contingent. At a certain moment; say around 1600, some individual, probably Galileo and some other famous men, embarked on this venture. They might as well have embarked on a different venture or continued the old ventures. A historically contingent decision: that is the basis of the principle of causality. If you want to have modern theoretical science, as he puts it, you must accept it. But you don't have to want modern theoretical science. That's your choice.

The interesting point is this: Nagel seems to have completely forgotten what he said in his relatively clear statements in his introduction, where he showed at great length that there is an obvious superiority of scientific knowledge to common sense knowledge; in other words, that you can explain to a cattle raiser that he would be better at cattle raising if he were to know what a modern veterinarian, or maybe biochemist or what not, knows. And in all other respects the same thing. So science is manifestly, objectively, superior to common sense. And when he comes to the key question he says it is logically arbitrary; it is historically contingent.

That is not a special flaw of this particular author. Something of this kind, not exactly in this form, but something of this kind you find in this whole literature. Let me explain that. The basis of modern science is ultimately an arbitrary decision, yet a decision determining the character of the whole modern world, of course, because that science has transformed the world



through the technology and in various other ways goes without saying. Therefore, we must speak of a historical decision. That is not a decision like the one of Herbert Simon's typist, you know, who decides to type what her boss tells her; I mean, if you can call that a decision. But that is a historical decision. It has determined the fate of men -- man -- all over the globe. Yet -- that is implied in what Nagel says -- it is one historical decision among many because when people had not yet embarked on modern science they had some other form of orientation whose primary principle, of course, was as logically contingent, as arbitrary, as the principle underlying modern science. There were other historical decisions at other times and places. The conclusion: the comprehensive context within which we have to understand our science, social or natural, is not logic because we have seen the ultimate principle to which we are led by logic is the principle of causality and the principle of causality is logically -- how did he put it? -- is logically arbitrary. So the context is not supplied by logic but by history because the ultimate basis of science proves to be a historical decision. And this implies something else of greatest gravity. History cannot be scientific, thus understood; because scientific means, of course, to have accepted one particular historical decision and not to be beyond any historical decision. History transcends the arbitrary and contingent adoption of science. History is superior in cognitive dignity to science. This is a point to which I have also referred elsewhere and which I must develop more fully next time: what I call the necessity for present day positivism to become historicism. Or in different terms: that of the two most powerful schools in the west today the historicism sees the difficulty and faces the difficulty which positivism never faces.

Positivism is, indeed, based on the old Western scientific tradition going back to Plato, and somehow -- I mean, in rare moments -- positivism reminds one of that. But positivism is, of course, an absolutely decayed Platonism, if one can call it Platonism in any sense, because the older view, naturally, was that science, the understanding of the whole, the universal knowledge, is the highest activity of man and is to be pursued for its own sake. No positivist today would dare to say that. The utmost he would say: I like science. Utmost. He can even no longer say, as his forbears in modern times said, science is necessary for human well-being. How can he dare to say that? Are we better off today, simply speaking, as earlier generations were? Was there at any time a prospect that a few men could exterminate the whole human race, a thing which we owe to modern science? The simple expression of that is, of course, the fact that the positivist would make the distinction between facts and values, which means, in plain English, he is unable to say -- to answer the question -- why science. In the best case he can say what science is, in this more precise sense of what does science do, how does science proceed, and what is the character of scientific concepts, etc. -- what they call logic, sometimes also epistemology. But the question, science for what, or why science, is no longer answerable and cannot be faced by this approach.

Let me state this very briefly. I'm afraid we won't be able to have a discussion today. Let me start again from the distinction of facts and values. This distinction means, in effect, that the most important questions cannot be answered by modern science. I think that follows immediately, because the distinction between facts and values can also be stated as the distinction between means and ends. The values are the ends and the facts are the means. It's not exactly the same, but roughly it's the same. Now, but what is the use of all means in the world if you do not know the end for which you wish to use the means. So the most important questions are those regarding the ends,



or the values. These questions cannot be answered by modern science. This is a very tough thing. The most important questions are non-scientific questions. Now there was some man whom I can only describe with that vulgar expression, a wise guy, because no less vulgar expression would fit the case, who found a way out. Questions which cannot be answered by modern science, he said, are meaningless questions. Now that would be wonderful. That means, in plain English, all meaningful questions can be answered by modern science. A grosser form of question begging has never happened, even before the invention of logic. These things are not merely academic things going on in classes on logic and so, but they have consequences. People become aware of that: that the most important questions are simply beyond science and then this happens which has this -- the effect was called, by someone who deplored it, the flight from scientific reason. Naturally; if science is only secondarily relevant the best thing to do is to go to the relevant things. And in particular, of course, science cannot answer the question, "Why science?" What is the meaning of that whole terrific enterprise? Well, formerly people said, and there are still some older gentlemen living who say, well, the root of science is the fact that man wishes to survive and needs tools and so on and so on, and the most perfect form of tool-making etc. is science. But, of course, this kind of knowledge which men surely need in order to survive cannot possibly be identified with the science which leads to the hydrogen bomb. In a word, no one is no longer able to answer the question, "Why science?" No reason can be given why a man chooses science or why man as man chooses science. If we make a thorough analysis of science, its methods, its principles, we ultimately arrive at the fact of an inexplicable choice, as Nagel himself said it quite clearly: logically arbitrary; an inexplicable choice. The ultimate fact is an abyss of freedom. That abyss is the fundamental phenomenon and not anything explored by science. And this abyss cannot be understood scientifically, of course, for scientific explanation is already based on the contingent choice of science. Any attempt, say by psychoanalysis, to explain that fundamental choice is begging of all questions, because by adopting psychoanalysis or anything of this kind you have already made the choice toward scientific orientation which choice, we have heard, is a logically arbitrary choice. It is strictly hypothetical. The only non-hypothetical phenomenon at which we arrive eventually is the stark facticity of the abyss of freedom. This is very simply the thesis by which existentialism has theoretically destroyed positivism. (Footnote: theoretical destruction is perfectly compatible with the practical survival in great prosperity of the theoretically destroyed. I think that is one of the elementary kind of common sense knowledge which I can presuppose). I will develop this somewhat later.

So it seems to me for every thinking contemporary who is not impressed by a very great but hollow power the issue is today the issue called historicism. But I have to develop this somewhat more fully next time.

Lecture 2, October 10, 1962: in part

I will repeat the main point I made last time. We have to start from the fact that natural right is generally rejected today. It is rejected on two different grounds, which I indicate by the names of the schools of thought in question: positivism and historicism. By positivism I understand the view according to which the only form of genuine knowledge is scientific knowledge, and scientific knowledge issues only in factual statements in contradistinction to value statements. The distinction between facts and values is also known as the distinction between the "is" and the "ought." Historicism, on the other hand, admits that the distinction between facts and values is untenable; that the system of theoretical understanding, the categorical system, is at the same time the value system. The categorical system and the value system are a unity, and this can be called the comprehensive view, the world view of the society in question, or with a German word, *Weltanschauung*. But there is an indefinite variety of such views and each having its own -- embodying its own notion of right. There cannot be natural right as a right belonging to man as man.

I began, then, last time to give a sketch of my argument regarding positivism. I enumerate the most important points. Is it possible to conceive of social science as a science wholly free from value judgments? Granted that one can distinguish between facts and value judgments, can one exclude value judgments from social science without making social science altogether sterile?

Now a well-known representative of positivism, Ernest Nagel, admits now the necessity of characterizing value judgments, as he calls them, in contradistinction to appraising value judgments. For example, "this and this is defective" is a characterizing value judgment, whether applied to a chair, to institutions, to human beings, and so on. But, "something must be done about making that defective thing entire," -- this would be an appraising value judgment and appraising value judgments have no place, according to him, in social science. Nagel tries to turn the table by saying that such characterizing value judgments are inevitable even in biology and even in physics. Yet this means that the exclusion of value judgments is impossible even in biology and in physics, if his argument is correct. The main point is that he admits now the necessity of value judgments in the social sciences.

But in the most general terms, one cannot maintain the fact-value distinction intelligently without raising the question, what is a fact and what is a value. And these questions would be, from the ordinary point of view, factual questions. But they cannot be answered, especially the question what is a value cannot be answered, without making a value judgment. For instance, more desire is lower than choice. Or perhaps to make it somewhat clearer, I believe it is necessary, if we wish to understand the world in which we live, to make a distinction between liberal democracy and permissive egalitarianism. What does this mean? I would say that the best term to understand liberal democracy is the term conscience. Liberal democracy admits freedom of conscience. Permissive egalitarianism goes much beyond that: it admits the freedom of every urge, unless it leads to murder, and even then perhaps this is a long question. So if you take the conscientious objector and compare him with the murderer then you have a simple example. The conscientious objector is willing to die for his conviction: the conscientious decision, and therefore it is recognized. The murderer does not have a conviction. That would be an extremely rare case: if someone would murder in order to uphold the right to kill. There might be

such a crazy man, but this is not the case of the ordinary murderer. So here, once you see the necessity of such a distinction, that what the murderer has in mind is something radically different from, say, what the conscientious objector has in mind, and only one of the two can be called values in the proper sense, your answer to the question of what value is constitutes a value judgment. That that prompts the conscientious objector is higher than what prompts the mere criminal.

Now the second major point I made is this: that the principle of science is the principle of causality; and a specific understanding of causality is underlying modern science. Of this specific understanding of causality, Nagel says that it is logically arbitrary -- on pages 323 following; I do not have the volume here. The specific understanding of causality which makes modern science what it is is historically contingent. Men could have made another fundamental decision and that would have led to something different from modern science, but it would not have been absurd; it would not have been impossible. Whereas in the introduction to his work Nagel asserts in fact that science, modern science, is the perfection of the ordinary understanding, of the common sense understanding, he asserts in the passage referred to that modern science is not the perfection, but one particular way in which we can transcend common sense, not superior intrinsically to any other.

I would like now to summarize this point and then to illustrate it by a more recent discussion. The basis of modern science according to this statement is then an arbitrary decision, yet a decision determining the character of the whole world, as we say, the whole modern world; and it is therefore a historical decision, one historical decision among many. For example, Christianity and Islam and Confucianism would be other such historical decisions. The comprehensive context within which we have to understand modern science is then not logic, because logic cannot go beyond laying bare the logically arbitrary character of the principles of this science, but history -- history which sees this historical decision in its relation to other historical decisions. And it is also clear that this history, since it transcends science, cannot be scientific. It transcends the arbitrary or contingent adoption of science. And it is also clear that history is then superior in cognitive dignity to science, because history does not rest on any particular arbitrary decision but surveys all arbitrary historical decisions of which we know.

I conclude this argument with the following general remark. Positivism is a theoretically indefensible position. It is amazingly thoughtless. It represents an entrenched position which has become effete. Why is it so powerful nevertheless? Why do so many people, I think the large majority of social scientists in particular, cling to it? It seems to me that we have to look for it in the first place for extra-theoretical motivations: the tradition of the connection between modern science and the modern libertarian movement, this famous emancipation movement leading towards a perfectly secular and perfectly egalitarian society. And I think one can find -- the bitterness and the heated character of the discussion can be traced to the fact that it is not merely an academic issue which is involved. This would, however, not be sufficient because, at least in the case of the serious positivists who are naturally a minority, it is a concern, a genuine concern, with the dignity of reason and science. That the theory does not live up to this genuine concern is another matter, but the existence of that concern I would be the last to deny.

Now, in order to illustrate this point I would like to say a few words



about a recent criticism of the position which I have taken. It is in a very well-known place: in the most recent issue, the September issue, of the American Political Science Review, by Mr. Rothman, who had attacked my position in an earlier edition, was answered by Mr. Cropsey, and now he replies to Mr. Cropsey. I think it is of some use to say a few words about his criticism. It is also interesting as a specimen of what is regarded by quite a few people today as legitimate criticism.

"Cropsey argues that in order to make my case," Rothman says, "I must refute certain of Strauss' assertions as to the implications of positivism and historicism, namely that positivism leads logically to historicism. This of course is neatly to shift the burden of proof. I was only required to demonstrate that Strauss had not made his case." The demonstration consisted, if I remember well, in the assertion that I had not made the case, which is not a demonstration. "Later in his essay he asserts that I admit the historicist implications of positivism because I refuse to argue that science itself is more worthy than other pursuits. I still reply, as indeed I wrote in my original essay, it is not a contradiction to assert that method of science is the only way in which to discover truth, and in the same time to recognize that there is nothing in the structure of the universe which justifies acquiring knowledge." Now he asserts here, science, the method of science (meaning of course modern science) is the only way in which to discover truth. Nagel seems to be an authority for him. Nagel says, in effect, the same thing in the introduction to his book. But in this discussion of causality, rather in the center of the book, he says that the basis of modern science is a logically arbitrary decision. And this means in effect that science is not the only way leading to truth, because then it wouldn't be arbitrary. So his criticism at this point is simply based on the fact that he does not know his own position as maintained by the authorities of positivism.

Then there follows a second argument which is too long to read and which has to do with what he calls my attempt to fuse normative and descriptive judgments: in other words, my questioning of the possibility of consistently and comprehensively to keep out value judgments from social science. What is the issue? Very briefly: I would never use the distinction between facts and values, or factual and value judgments, except ironically or in polemics. When I have to argue out with someone who maintains the distinction, then, of course, I would be compelled to use it. As to the distinction between normative and descriptive, I would simply say that an assertion, for example, "This is a well-written essay" -- I would say that is a descriptive assertion as much as "an essay of 18 pages." One would have to dig much deeper in order to find a proper equivalent of the distinction between normative and descriptive which seems to be so evident to Rothman.

In the second chapter of my Natural Right and History, I discuss the case which I may call the case of the blundering general, with a title reminding of Earl Stanley Gardner, in which an example was taken from Max Weber: when Max Weber describes the case of a general whose actions are to be explained causally. And in order to do that properly, Weber asserts, we have to have a clear notion of what would be rational action in the circumstances and if the action is rational in the circumstances there is no further need to explain, because he acted as a rational general would have acted. But if he deviates from that rational schema then a special causal explanation is needed. For example, he was drunk or he hadn't slept enough or he didn't know something which he could have known, and no other explanations. Weber admits when he discusses this case that

when we look at the picture, what we see, then, of this particular general who did not act strictly rationally, we might come to the conclusion that he was a particularly inept general. Now this is, of course, an objective value judgment. He was meant to be a general. He is measured by the standard inherent in the situation, and Weber admits we cannot but say, on the basis of the evidence, the objective evidence, that he was an inept general, which is, to repeat, a value judgment. Weber does not deny it, but he simply says that is of no interest to us because we are not interested whether he is inept or not; we are only interested in a causal explanation. But this is, of course, absolutely uninteresting (whether Weber was particularly interested in a causal explanation). The main point is that he cannot do his job as a social scientist properly without making value judgments. For this reason, I would say, the distinction between normative and descriptive doesn't necessarily come in here. What I do contend is that it is absolutely impossible to speak intelligently and comprehensively about human things without distinguishing between higher and lower, better and worse, or something of this kind, and these distinctions are not always easy to make. In some cases they are very easy to make. But I admit: in the most interesting cases they are not easy to make, or to defend. But this is not a good reason for abandoning the attempt to acquire clarity about what is preferable or less preferable. If one cannot say which of two high mountains covered by clouds is higher, we could still say that a mountain is higher than a molehill. Now in most cases we are concerned with the difference between mountains and molehills, and not with the very highest mountains. So, for practical purposes, our ability to distinguish between mountains and molehills, between, say, a great statesman and a very poor politician, is much more important than the question whether, say, George Washington or Abraham Lincoln was the greatest American president.

Now I must, however, turn to the third argument of Rothman, which he regards as the most important thing. "Next and most important, Cropsy denies that Strauss has shifted his position as to the dependence of natural right upon classical cosmology." I regard this as mere antiquarianism: whether I change my position or not. "He does not, incidentally, deny my point as to Strauss' shift from Hobbes to Machiavelli," which is very amusing because the shift means simply that up to a certain point I thought one could say that Hobbes is the founder of modern political thought and then I learned, gradually, after having understood Hobbes better and also Machiavelli better, that the really epoch-making event is Machiavelli. So if it is bad to learn, I can't help it. But this only in passing, because I think it is quite revealing for this kind of criticism. But this so-called shift of my position regarding the dependence of natural right upon classical cosmology does need a discussion because it will be helpful for what we are going to discuss later.

Now what is the issue? And I will illustrate it first by two quotations. One I take for simplicity's sake from Hooker's The Laws of Ecclesiastical Polity, in this only edition which is easily obtainable, page 150. "All things that are have some operation, not violent or causal. Neither does anything ever begin to exercise the same without some fore-conceived end for which it works. And the end which it works for is not obtained unless the work be also fit to obtain by," i.e., the means must be agreeable to the end. "For unto every end, every operation will not serve. That which doth assign unto each thing the kind, that which doth moderate the force and power, that which doth appoint the form and measure of working; the same we term a law." So, this is a definition of law in the widest sense, comprising as much laws of planetary motion as well as what are now called biological or sociological laws. The key

point is that law is not intelligible -- regularity of behavior, one could also say, is not intelligible -- but with a view to some end. All things that are, even the falling stone, has some operation with a view to an end. This is the old Aristotelian view which one may call, for simplicity's sake, the teleological view. And this was surely the basis of the most developed natural law teaching of the past.

Now I read to you a statement written about 60, 70 years later, from Spinoza's Theological-Political Treatise, Chapter IV, beginning. "The word law, taken absolutely, signifies that according to which each individual or all individuals of the same species or some of them act in one and the same certain and determinate manner." You see, in this definition there is no word said about end. The regularity of action and the certainty of action: that they all act in the same way. Hooker did not assume that. Hooker only said they all tend towards the same end. Whether they achieve the end is perfectly open, so that the actions, say, of human beings, differ very widely, and yet they can nevertheless be said to tend, rightly or wrongly, perversely or soberly, to one and the same end. Here the consideration of end is completely out. And this is, of course, the notion of law which became triumphant in modern times.

Teleology means there is no necessity that there be universally the same behavior, external overt behavior. In the non-teleological view, which I illustrated by Spinoza, there is no end, but universally the same behavior. Now the teleological view fully developed means a teleological cosmology, and this was developed by Aristotle. Modern natural science is non-teleological. And modern natural science has had, as we all know, tremendous successes, successes demonstrated even to the complete layman by modern technology. What modern man can do on the basis of science is, of course, an argument for a certain truth of modern natural science. Hence, it is clear that some revision of Aristotle's cosmology is necessary, as I believe is today universally admitted. Since I do not like to haggle, and even appear to haggle, I spoke of a victory of modern natural science in the introduction of my book on Natural Right and History. And my so-called shift consists in the fact that there are statements in other publications of mine, even in Natural Right and History, which do not take for granted this victory, and I have to explain this very briefly.

In order to achieve the revision of Aristotle's cosmology properly one would have to be a cosmologist, or as we say today, physicist, which I am not. But, on the other hand, this much I believe we can say: if we take modern natural science, modern non-teleological natural science, and try to apply it to human affairs we do not achieve a solution. This leads, in effect, to a distortion of the understanding of human things.

The key point is this -- and this has in itself nothing to do with teleology, at least not with teleology as ordinarily understood -- modern natural science, if it is left entirely to itself, and not influenced by other considerations, implies the denial of essential differences. The most popular example of that is the theory of evolution. There is no essential difference between man and the brutes because man has developed out of the brutes and there are cases of men, either today or in the remote past, who are closer to some living or extinct apes than these men are to other men. You have learned this in grade schools so I do not have to labor that point. The denial of essential differences -- and this implies the understanding of what we popularly surely would call the higher, namely man, to the lower: to understand man as much in terms of the brutish as possible; of the human in terms of the sub-human; of



the rational in terms of the sub-rational. You can see this in more or less complicated forms in Marxism, on the one hand, in the reduction of the whole higher life of man to the modes of production on the one hand, and in psychoanalysis, on the other.

Seeing that fact, that the approach which is peculiar to modern natural science leads to a distortion of the human phenomena, the most convenient thing to do is to speak of a dualism of the sciences: the sciences of nature and the sciences of man as man. Something of this distinction is surely known in this country. It was more generally known in Germany, where distinctions were made, for example, between the natural and the cultural sciences, with the understanding that they are distinguished from each other not only by subject matter, but also by their methods and questions. So this dualism of sciences is a convenient practical solution, and you must have heard such expressions, for example, as the humanistic understanding of man in opposition to a merely scientific understanding of man. This is one way of putting that. But -- and here I agree with the positivists -- there is a need for an ultimate unity of science. So this dualism of science can be accepted only as provisionally indispensable. But this comprehensive science is today only a pious wish; and therefore one cannot say more than it is to be desired.

This is one point of the question which Rothman brings up. The other is the following point, which he does not bring up. Now, when we speak of Aristotelian cosmology and the cosmology implied in modern natural science, cosmology has two very different meanings and that is due to the fact that the relation of cosmology to common sense is different in the two cases. Aristotelian cosmology is in harmony with what we may call the common-sense understanding of things in general, and of the human and political things in particular. That the earth is in the center, that the sun moves, rises and sets, whereas the earth stands, is the way in which common sense sees the situation; similarly in what Aristotle says about human things. But to limit myself entirely to what this means in regard to political or social matters, Aristotle's understanding of social and political matters is in principle the citizen's understanding. It tries to be clearer, but it is in principle the same understanding which the citizen has; whereas, if you take especially present-day scientific political science, it breaks fundamentally with the citizen's understanding and tries to find its bearings in an entirely different way. Let me state this in the most general terms: all cosmology, Aristotelian or modern or what have you, must start from the world as given, from the world in which the sun rises in the East and sets in the West and the earth is resting. It must ascend from the world as given, to its causes. Aristotle takes this starting point, the world as given, more seriously than all other cosmologies; and for this reason Aristotelian cosmology, regardless of whether it is tenable in its details, has a kind of theoretical superiority and this I had also in mind. Rothman is unaware of these complications, and doesn't understand that.

One last point. I mention only what he says in the last point. He accuses me practically of subversion of American principles, and I can only say if this is so this is not the fit subject for an article in the American Political Science Review. This should be a matter for the F.B.I. I would absolutely be in favor that I be investigated. Since I never was investigated, I would enjoy the experience.

Let us leave it at these remarks, and before I turn to my second item, historicism, I would like to find out whether there is any point which you would

like to bring up. An adequate discussion of the issue raised by positivism would require at least a whole quarter, of course. That goes without saying. I cannot possibly do that. On the other hand, I cannot leave it at simply saying read, say, my earlier publications on that, because lectures have exactly the function to facilitate the understanding of things which are not so easily intelligible when merely written or printed. Yes?

Q<sub>1</sub>: I don not quite see yet why you say that scientific knowledge cannot be superior in cognitive dignity, simply because it is based on a historically contingent decision or historical accidental decision.

S: Well, I can only reproduce what Nagel said. The preference given to modern science, I mean to the principles on which it was based, is logically arbitrary. And this implies, of course -- you could also take another way, you could also take another interpretation of the causality principle. Then you would never get modern natural science. You would get God knows what.

Q<sub>1</sub>: I do understand this but this does not imply either that science itself is logically arbitrary, nor that it is either superior or inferior in cognitive dignity to other modes of knowledge.

S: It is neither inferior nor superior to other modes of knowledge, you said. That is what he says. That's what he says. And therefore the preference given to it is logically arbitrary. Don't you see that? When you say you have n ways, I pick this. That's arbitrary, unless you show that it is the superior. That he cannot show. That was the old way. You see, this has happened in positivism in the past 50 years. Oh yes, the last 50 years! The traditional view was scientific understanding, say Newtonian physics, is the perfection of ordinary understanding. The Newtonian laws are only in the most developed form the same thing which we do when we say this chair has been put there. You know? It's a causal judgment. Now if this is fully developed then we arrive at something like Newtonian physics. Scientific understanding is the perfection of the natural understanding; and this is, of course, still lingering on. But it is no longer theoretically defensible. That is the point. Somehow, in the last part of the 19th century, people became aware of the fact that scientific understanding is not unqualifiedly the perfection of natural understanding. If you read Henry Adams' autobiography, in the chapters dealing with his scientific studies, you will have a very good account of this change which took place roughly between 1860 and 1890. The notion, to repeat, that scientific understanding is the perfection of the human understanding had to be abandoned. And then, hinc illae lacrimae: from here all these tears which should be shed by everyone who is in that boat. Did I make my point clear to you now? Did I make my point clear?

The only step which I would have to take now, which I have taken in my exposition, is the step from logically arbitrary to historical decision. But that is very easy because these are not arbitrary acts of here an individual and of an individual there, but these were acts which determined the character of a whole society and today, in a way, of all human beings in any place of the world because this scientific interpretation of the world, theoretically or in its practical consequences, affects all men now, as you surely know. Now?

Q<sub>1</sub>: I assume that Nagel would then argue that the superior cognitive dignity, as you say, of modern science is justified in pragmatic terms. But this, I suppose, you would dispose of in terms of your own argument --

S: Of his argument, of his argument. What is the pragmatic superiority?

Q<sub>1</sub>: Success.

S: What does that mean?

Q<sub>1</sub>: That it works.

S: No, no. But what does working mean? It means, if I may say so, to give a simple example, the abolition of certain epidemic diseases, to mention a simple thing. Good? For example. And also jet planes, and these other things. But these all presuppose value judgments. Don't you see that? That he can never afford to do. In former times -- I mean, and this simple view -- there is a certain simple view, which, of course, still lingers on, and this says science is the perfection of the human understanding because it is the most perfect way for increasing human happiness. Men are healthier, they live longer, and there is great abundance of all kinds of goods -- you know, housing and whatever you have. You know that. That is surely practically very important. Within the academic halls, however, where people have to give a theoretical account of what they are doing, this does no longer work. No one can today say in an academic context, "this and this is the purpose of science." Science, positivistic epistemology or methodology, however you call it, can answer the question, I suppose, what is science, i.e. what are the right scientific procedures, and this kind of thing. It cannot answer the question, why science. Any answer given there, high or low, is a value judgment and, by definition, value judgments are excluded. It is impossible. No, it is nothing to laugh about. It is a crisis: the intellectual crisis to which there is no parallel, because from the very beginning of science it was always understood that science is a very high activity, perhaps not the highest -- that was -- but a very high activity, both for its own sake and for the sake of its consequence. This answer can no longer be given. I have tried to show it in my criticism of Max Weber. Max Weber has no longer the possibility of distinguishing consistently between stamp-collecting and science. No, I mean this -- the reason being, no value judgments. You wanted to say something.

Q<sub>2</sub>: I see that there has to be a value judgment and, of course, Nagel says he admits some, but I don't see any contradiction between saying in the chapter on causality that the choice of science is logically arbitrary, and then, in his introduction, or preface, saying hypothetically, if you do grant the value of understanding why things happen the way they do and if you grant the test of making things work as the test of whether you understand why things happen the way they do, then hypothetically, if you have this value, then the question is over, the cognitive value of science is established.

S: But what you do postpones only the arbitrariness still further back. You only ascribe the arbitrariness already to our need of ordinary knowledge; for example, of finding our way out of this room to the street. But I would say this: that one must take a somewhat extreme and not sensible view to deny the value of knowledge altogether. It is impossible to live on any level without having some knowledge of one's "environment."

Q<sub>2</sub>: But this is exactly the point he is making in his preface.

S: Yes, but then he tries -- I think that is a sound beginning and it would be fantastic, in my opinion, to deny that. But then he argues, granting that,



that, for example, cattle-raising -- we need food in one way or the other and we need some knowledge for that food. And now he says very reasonably that this knowledge of food which, say, a simple farmer or hunter has is extremely limited and based on all kinds of accidents. We must proceed methodically and systematically; and this methodic and systematic knowledge of our environment is in its most perfected form modern natural science. That is perfectly all right. So I would say in his introduction he, in effect, proves -- not very exactly, but sufficiently for the purpose -- that the scientific understanding is the perfection of the ordinary common-sense understanding of the non-human environment. That is perfectly all right. But then why does he then later say this perfection, what seemed to be the perfection, is only one mode among many which has been arbitrarily but decisively preferred? Because we cannot get out. We cannot jump off this train.

Q<sub>2</sub>: He might say it would come to the meaning of what you mean by logically arbitrary as opposed to really arbitrary. That is, just because in logic you cannot find a strict verification of a value from a fact. That's all he means there. For instance, to know how things work; that's a value; if you want to know how things work, that's a value.

S: No, that is -- I'm sorry. No, no, what he means is here there are -- say, principle of causality -- somehow men cannot live without raising the question why. And this is, you can say, the most general and simple meaning of causality. And now he says, there are n interpretations of that, because that is much too general and vague: n specific interpretations. One particular interpretation is that underlying modern natural science. It is not intrinsically superior to any other mode. Therefore, the preference for it is arbitrary. As he puts it, that is logically arbitrary. That is perfectly unambiguous: what he means by that.

Q<sub>2</sub>: I think you could also say that the desire to live is logically arbitrary. That does not mean it is arbitrary.

S: That is correct. He would say that. Yes, but still -- but the question is, is everything logically arbitrary? Obviously not. Otherwise it wouldn't make sense to speak of logic.

Q<sub>2</sub>: (Inaudible).

S: Yes, sure he would say that. Oh sure, naturally, but there are, however, things which are not logically arbitrary.

Q<sub>2</sub>: The whole point is that he has a special meaning for logically arbitrary.

S: No special meaning: simply that it is not evidently necessary. That's clear. But there are things which are evidently necessary. For example, if you have a certain system of certain premises, then the conclusions follow necessarily. That's not arbitrary. But what is the mistake which, in your opinion, I make?

Q<sub>2</sub>: I think that all he is saying when he says it is logically arbitrary is that he can't understand how you can logically, by, say, calculus or symbolic logic, imply a value statement from a fact statement.

S: That is not the question here. Here we are not concerned with factual

questions. We are concerned with one interpretation of a theoretical principle, not a value judgment: the principle of causality.

Q<sub>2</sub>: If he holds that every value is logically arbitrary --

S: Yes, sure. But here it is not a question of value, but of a theoretical premise.

Q<sub>2</sub>: But the value of a theoretical principle.

S: Yes, but value: what does it mean here? I mean, what is the relation of, say, modern science compared to a West Indian medicine man's knowledge of nature? What is the relation? Now in former times people would have said, without any hesitation, what the medicine man does is not strictly speaking, knowledge. So there are certain patches of knowledge, but connected with all kinds of fantastic and wholly unwarranted assumptions; say, superstitions. And, of course, science is superior to it because it avoids the typical mistakes which these men make. This is a view Nagel presents in the introduction and that would again mean, to repeat, that modern science is the perfection of the human understanding. And that is in itself a perfectly defensible assertion. But when it comes, however, to a precise discussion: what is the key principle of modern science in its peculiarity, this principle of causality, then he says it is logically arbitrary. Instead he would have to show that this is the most intelligent understanding of causality implied somehow in a very incipient and germinal way in all problems.

Q<sub>3</sub>: What do you mean by the words cognitively higher (?) history being cognitively higher (?).

S: Because it makes something the theme which is the premise of the others who do not make it a theme. Take a simple example: for example, in our ordinary understanding of science today the fundamental principles are discussed in physics, whereas in chemistry, biology, and so on, they are always applied. Physics does not presuppose biology, but biology presupposes physics. Physics is in this sense cognitively higher. Mathematics would, in a way, be still higher. So, if the ultimate premise of modern science is a logically arbitrary decision, a historical decision, as such related to other historical decisions like Islam, Christianity, Judaism, Confucianism, or what have you, then the science dealing with the highest principles would not be logic, but would be historicity: (in this sense, of course, not the study of some particular archives, you know, but of the universal history). The understanding of this prime fundamental historical decision: that would be the highest science, from this point.

Q<sub>3</sub>: Why? (Remainder inaudible).

S: More fundamental.

Q<sub>3</sub>: (Inaudible).

S: Oh, I didn't mean anything moral about the word dignity. I meant that it is either higher because it deals with something transcending the other sciences -- you can also say it digs deeper.

Q<sub>4</sub>: What I think you're saying then is that if one says that modern science is

the perfection of understanding, of the techniques of knowledge, is the perfect or the highest, and also says that it is not logically necessary, then it follows that it can only be the perfection of understanding if it is the right means towards a certain end. And this Nagel refuses --

S: That is not necessary. I mean, that might come in but it is not necessary. If you assume that man is a being which is capable of knowledge in a peculiar way in which no other brute -- even if it is only a difference of degree -- I do not have to go into that now -- then you can, of course -- regardless of what the use of that is, but man simply is the being which cannot live out its life without being concerned with knowledge to some extent, and then the question arises, which is the more developed, the less developed, and perhaps the highest developed kind of knowledge.

Q<sub>5</sub>: (Inaudible).

S: In what way? With the values? No, I would like to keep it separate from that because I think it can be treated separately.

Q<sub>6</sub>: It seems to refer back to your answer to the previous question that physics has more cognitive dignity than biology since biology presupposes physics. Mathematics has more cognitive dignity than physics, etc.

S: It is not quite the same question.

Q<sub>6</sub>: When Nagel in the passage you quoted said that the choice of science as a means towards understanding was logically arbitrary, he says it is logically arbitrary; but by that he doesn't mean that it is simply arbitrary. Mr. Nagel, I believe, would hold that contingently we can through investigation discover causes of human behavior. This is Nagel's point. He goes on to say that science is -- well, through actual practice and experiment we can discover the causes of human behavior. Therefore -- now, of course, this is. . . .

S: I can only say this: if by a process of trial and error, as other people said it, the procedure of present-day natural science has proved to be superior to any earlier form of science, modern or non-modern, then it doesn't make sense to speak of logically arbitrary. Then it is, of course, proven to be superior, according to perfectly sufficient standards; that, say, Newton's -- not only theories, but his methods, have proven to be inadequate where new phenomena were discovered and improvement has taken place and since there was a continuous process it is reasonable to assume that what present-day physicists do, and therefore also chemists and so on, is methodically the highest development of science hitherto. That is, I am sure, what most physicists would think. But we are concerned with the fact that a logician, a philosopher of sorts, that he speaks of a logical arbitrariness and this, I think, is of the utmost importance. And I must only say this is not only in Nagel. I could have quoted others. It so happened that I looked at Nagel's book. If you read Henry Adams' autobiography, how he looked at science, say, in 1860, you know, when Darwin seemed to have solved the problem of life -- and then when he came back to it, after a long interruption, say, around 1890 -- and he was not a scientist, but he was an intelligent observer, by all means. And then he saw not only that in biology things had not gone as well as they looked to go in 1860, but that the general understanding of science, you know, in the works of logic and epistemology, had been radically changed. It had become much more "modest." But this is, of course, a very general word: mod-



esty. The modesty consisted in a reinterpretation of the meaning of science of which present-day logical positivism is the most recent form.

Q<sub>7</sub>: I wonder if you would elaborate on the conclusion you draw from the fact that modern science does not make essential differences.

S: Yes, I gave the simplest example and that is evolution. That there are transitions from one species to the other and from plants to animals, and what have you. There are no essential differences, and this shows itself in the study of man in particular. From the older point of view, one would start in the understanding of man of what is, perhaps, the specific difference of man, and to try to understand even the state of a human baby in contra-distinction to that of a new-born puppy in terms of their specific differences. Today the opposite tendency prevails: to understand the specifically human in terms of what is at least common to man and the brutes or, most importantly, the brutes nearest to man. I give you a simple example within political science. In former times the general understanding was there is a variety of regimes. Say, today, liberal democracy and communism are the most important examples. But there are an infinite variety of others. Today there is a tendency not to start from the essential differences of the two, but from things which are common to all regimes. Do you see that? And to reduce, as it were, the specific difference to a common denominator going through all. In a schematic way you have freedom and suppression under every regime and it is only a difference of degree. Say, in communism, the degree of freedom is 20 and of suppression 80, and in a liberal democracy it is roughly the inverse -- where the meaning of the whole regime, the peculiar character, is lost in a neutral description of this kind.

Q<sub>7</sub>: (Inaudible).

S: We have in the older science -- how common sense makes the distinction between animate and inanimate beings. What does bio-chemistry, and such things, do? They try to understand the animate things in terms of the inanimate. The distinction between animate and inanimate is supposed to be a popular distinction which, with the perfection of science, will give way to an understanding of the live in purely physical, chemical, terms. I mean, there is evidence.

Q<sub>7</sub>: (Inaudible).

S: Yes, sure. . . .

(Change of tape).

S: The fundamental premise is homogeneity. But how this works out -- whether this is visible in practice immediately -- is another question. But fundamentally, it must be.

Q<sub>8</sub>: I'm a little bit confused. Sometimes you seem to be saying that our interpretation of causality is arbitrary. Other times you seem to be saying that causality itself is arbitrary.

S: Yes, even that, by the way, is a great question: causality itself. What is the status of causality? What is even the status of the principle of contradiction in logical positivism? I could not go into that in this very brief discussion. What is it? These cannot possibly be empirical principles. Im-

possible; because they speak with -- empirical statements proper can only be said to be strictly valid on the basis of our knowledge acquired hitherto. And whenever you go beyond that, then a non-empirical principle enters. Now, the principle of contradiction is surely not meant to be -- up to now, it didn't work if we contradicted ourselves. But it means whenever and wherever, on which planet people think, people speak, they talk nonsense, strictly speaking nonsense, when they make self-contradictory statements. I mean, not going back into deeper things, but the Kantian view is that these are so-called a priori principles. Logical positivism, or positivism in any form, denies the a priori. What can it be? Is it a stipulation? Is it a stipulation that we say -- it wouldn't make sense to say a stipulation because then you can say -- if it is merely a stipulation then you can say we could also stipulate differently, which you cannot do in the case of the principle of contradiction. This will be the last question.

Q: You said it was universally acknowledged that revision is needed in Aristotle's cosmology. Does this necessarily mean that revision is needed in his ethics?

S: No, surely not. But still it is not a simple thing. I mean, one has to consider that: whether it does not lead to some revisions. But not in principle. One can simply say this, I mean, speaking colloquially: that even if modern science is radically superior as science of non-human things to Aristotelian science nothing would follow regarding its superiority in the understanding of human things, if there is an essential difference between human things and non-human things, human beings and non-human beings. I know that we could go on, and in a way should go on, for some time, but there may be other occasions and I must now continue with my argument; because; after all, this is only preparatory: to awaken a sense, if I succeed in that, in not being so certain that the views now prevailing are so compellingly true and adequate; that notions now rejected deserve to be in the dustbin of history.

(Remainder of this lecture, on historicism, duplicates material already available in Dr. Strauss' earlier lectures and writings).

Lecture 3: October 15, 1962, in part

Now I began last time, or rather the time before, with a criticism of positivism, and for convenience sake I used the communication by Rothman in the recent issue of the American Political Science Review as well as a book by Nagel on which Rothman's criticism is based. I have been told, in a way to my regret, that my criticism was not fair -- that some of you felt -- and I'm, of course, very anxious to be fair. Now therefore I have to come -- unfortunately, I have to say a few more words about this subject.

Now I will speak with utmost frankness so that you can understand any misdemeanor on my part. I have dedicated some decades to this kind of subjects and my first impression and my final impression is that Rothman believes he can dispose of my work without having given any indication whatsoever that he has invested a comperable amount of reflection and study. This is a wrong kind of egalitarianism: that everyone is as competent to judge as everybody else. That's not so. One must do something to become competent. Fundamentally he repeats only the things which almost everyone in social science says day after day, opinions which I myself, incidentally, once had. So, in other words, I was familiar with the whole argument before having read it. The view which I take now may be wrong, but I do not talk nonsense and I do not glut the market with books and articles. Therefore, I would assume from the point of view of fairness, one should consider what I say; not merely repeat the commonplaces with which I am familiar.

One only has to contrast Rothman with Nagel, his authority. Nagel has given some thought to my arguments and he comes up with the distinction between appraising and characterizing value judgments, which is at least an attempt to see whether I did not have a point. Rothman, of course, does not the slightest attempt in this effect. I am somewhat impatient with hearing the same things with which I am fully familiar constantly repeated, the things which I must be presumed to know if I am not presumed to be entirely illiterate. I was somewhat impatient for another reason. And this appeared in the occasion of Rothman by his combining a critique of my scholarly position with a questioning of my loyalty to the United States. The value-free science is in fact not value-free. It is based on concealed value judgments, as I have asserted more than once and I believe also shown more than once. Value-free science is "liberal" in the present-day American sense of the term liberal. In the name of scientific objectivity as detached concern only with the value-free truth in fact it propagates a certain policy, both domestic and foreign. Now I have nothing against propagating it, but what I'm opposed to is that this is propagated in the name of value-free science.

One only has to contrast present-day liberal social science with its originator, Max Weber; for Max Weber always insisted that the meaning of value-free science as he understood it is that one should be ready to admit unpleasant truth, not easy to swallow for one's own party, political or whatever it may be. For the present-day average liberal social scientist there are no truths unpleasant for liberalism. In other words, it is really an amazing form of dogmatism.

To all this one could very well reply: still, I admit having been impatient and one ought not to be impatient, and especially a teacher ought not to be impatient, with which I fully agree. But I am now compelled to devote another



part of our valuable time to this issue. I repeat the point as restated by Rothman: science is the way to truth. And interpreted that would mean science does consistently and comprehensively what common sense does inconsistently and only here and there. Science is, then, the perfection of common sense. Modern science as it exists now is the outcome of a long process, by no means finished, of trial and error. Its basic premise is, as Nagel says, not Rothman, but Nagel is the authority for Rothman and therefore we have to impute him this view unless he denies it -- the premise, the basic premise of modern science, is logically arbitrary.

I think at this point a certain argument arose. I interpret that to mean that Nagel says this logical arbitrariness has the character of a historical decision made in the 17th century and this leads inevitably over to historicism in the way in which I explained it. Unfortunately, I had to return Nagel's book to the library and therefore I cannot read to you literally what Nagel says. I believe I have a sufficiently good memory to trust it, but I cannot ask anyone else to believe me. Therefore, I will assume that I was wrong in ascribing to Nagel the view that logically arbitrary means historically contingent, a historical decision, and I will follow the line suggested by one of you last time and say logically arbitrary does not mean simply arbitrary. It means rather this: science, while being logically arbitrary, modern science, is the most perfect form of common sense understanding which we know. It is logically arbitrary because it acquired its form by the interplay of logic and experiment. That is, I think, what the gentleman last time suggested. I am willing to accept it for argument's sake.

But this does not mean -- and now I continue Rothman's argument -- that science is the perfection of man as man. Science is the most perfected common sense understanding, but it is not the perfection of man as man, because man has -- I come back to that later. Still less, of course, does it mean that every man should become a scientist or even get an elementary training of science. That follows in no way from that. All right. What we keep in mind, however, is the distinction between science and common sense without which the whole issue cannot be stated. And the difference between science and common sense shows itself most importantly for the social scientist in the fact that in positivistic social science there are no value judgments possible, whereas in common sense knowledge value judgments cannot be thought away. Common sense understanding is always termed the understanding of values.

But there is a difficulty here in the attempt to establish a value-free social science, a point which I have made frequently. And I was glad to see that Nagel replied to it by making a distinction between legitimate value judgments, legitimate in the social sciences, and illegitimate ones, by distinguishing between characterizing and appraising value judgments. I will illustrate it by one or two examples. It is impossible for any scholarly student of art, whether he is an art historian or sociologist of art or what not, to do his work without making a distinction between art and trash. Now this is, of course, a value judgment; and this implies, to mention only one corollary, that criticism, literary criticism as well as criticism of other art, is a rational enterprise. In other words, not merely an expression of "I don't like this modern art," as Khrushchev and Eisenhower say. That is nice; I like that. But it is, of course, not criticism because then you have to say a bit more than that. Nagel, in fact, admits that now, but he would also say, and that is the meaning, from this characterizing value judgment, "This is art; this is trash," nothing follows for our action. It is as defensible to be utterly indifferent

to art, and even to burn all works of art, as to take art seriously. That is what he means. Now let us take an example somewhat closer home: the distinction between the statesman and the politician. That corresponds exactly to the distinction between art and trash. Now the politician, to give a crude example, is a man who says how we are going to win the next elections. Period. And what do we do once we've won the election? Well, we prepare winning the election following. That's all there is to it. And it is clear that there are also men who are not merely concerned with winning an infinite series of elections, but also with what they do, and if this is done on a certain level and with a certain ability we speak of a statesman. That's not a definition of a statesman; only an indication that the distinction between statesman and politician is not absurd. But again Nagel, I think, would now admit that, but he would say it is as defensible to be indifferent to all political matters as to be concerned with them because latter would be appraising and taking a stand and that is no longer possible for a scholar or scientist.

Still, let us look -- I can be wholly uninterested in political and social matters and that's my business. But, on the other hand, whenever we speak of social science we presuppose that these are people who are concerned with society, just as it is hard to find a physician or a student of medicine who is not concerned with preserving health. So this practical function of preserving health in medicine belongs to medicine as an art and in a similar way concern with society, with the decent order of society, belongs to the social scientist. If someone says, "I turn my back to social matters, I want to live as a beach-comber or Bohemian" -- I don't know what -- that is surely all right to begin with, as defensible as any other non-criminal intention, but he surely is in the wrong place when he becomes a social scientist. Now if we make, then, this premise we see that it is impossible as socially interested men to be indifferent to such things as juvenile delinquency, crime waves, corruption, or what have you. In other words here these appraising (Note: Possibly a slip of the tongue and characterizing was meant) value judgments -- "that's a crime wave," "there and there is corruption" -- become inevitably a guide to action, not free from complications -- for example, it may be, in a given situation -- to get rid of corruption may lead, because of a very broad corruption, to still greater social evils, and then you might say keep these corrupt politicians; they are a lesser evil than clean fanatics of a kind: a politically defensible view but this is again all value judgments. What is better? What is worse?

Now what is true of art and society is also true, of course, of science. It is absolutely necessary to distinguish between genuine science and spurious science, between a great scientific discovery and a minor trivial thing, of course -- than between art and trash and so. But one can also say why should we not turn our back to science. I, as an individual, may have n reasons which are good. I may have to feed my starving family as a young man -- you know, often, sometimes, find this condition: a man gifted for science will become a green grocer for the rest of his days and these kind happen all the time and there may also be some of a more interesting nature. But now let us see what the difficulty is. Here Rothman states the following thing -- Cropsy had argued, on the basis of good old Aristotle, since man is most naturally defined in terms of reason, i.e. the rational animal, both his natural end and his excellence are to be defined in these terms. That's true. In other words, no one would say the excellence of man as man consists in tight rope dancing, although it is quite a remarkable achievement of which very few people are capable, but one wouldn't say it is the perfection of man as man. It is a perfection of which some men are capable, but it is somewhat marginal, whereas, for example,

science would be closer to the center, to say the least. I read to you Rothman's sequel. "Of course, most contemporary empiricists" -- that is another name for positivist -- "would agree that it makes sense to characterize man in contra-distinction to other animals by his ability to reason." Very well; so there is no disagreement there. It still makes sense to say man is a rational animal. But what is the difficulty? "A definition of man as a reasoning animal does not logically entail the assumption of one natural end as against any other unless it can be demonstrated that it is impossible to say anything meaningful about man except in terms of the natural end or standard which is accepted. One can, for example, agree as to the uniqueness of the capacity to reason" -- meaning, man is the only rational animal -- "and argue for an aesthetic life or a life dedicated to the acquisition of power." I leave it at this quotation because this makes the argument somewhat more concrete.

Now the criterion which he uses, "it is impossible to say anything meaningful" -- there is nothing in the world on the basis of which you cannot say something meaningful. For example, you can say a lot of meaningful things on the basis of Hitler signs, of Marxism, or of psychoanalysis. Of course, meaningful it is. The question is whether it is true or whether it is comprehensive. This is a silly criterion, but I do not want to -- now let us see. Here he has this point; the concrete question is while man is a rational animal it does not follow that the cultivation of his theoretical reason, i.e. science, is the highest perfection of man. The acquisition of power, the striving for power, and the aesthetic life are equally legitimate choices. Now, to begin with, why not? And this is, of course, a typical expression of that value-free science because it treats all these goals as equal in rank. Do you see that? Acquisition of power; aesthetic life; the life dedicated to science, are equal in dignity or rank. Yes, all right, one must surely investigate it but I would ask this young man has he never heard that there have been people in the past who have really thought a bit about such things as desire for power, or however they called it and seen whether it is really a worth while object for a man who knows what he is doing. And one doesn't even have to read, say, Cicero or Seneca or Aristotle. One simply has to have a little bit of experience and not forget in the classroom what one knows outside of the classroom.

Now look: outside of the classroom when you see a man -- take in a department of -- what shall I take? -- meteorology, in another country of course -- and there are a group, 17 professors and assistant professors and lecturers, and then there is one fellow who wants to be chairman. (Laughter). Well, that is it. That's an example. He only wants to have his hands in all possible pies. You may even find such people in this country. (Laughter). Now -- and what is the reaction of a sensible and conscientious man to that? That is something petty. There may be a situation when one man and only one man can do this job best, and then whether he likes to do the job or does not like to do it, whether he enjoys bossing people around or detests it, the sensible man would say he should be the chairman. The mere interest in acquisition of power is something absolutely empty and petty, and therefore it is quite interesting -- in former ages people didn't speak of this desire for power so much. They used another term which also leads to difficulties, but which indicates a somewhat broader and more human horizon and that was the term glory. No one ever said that Hannibal and Scipio wanted power. Perhaps they were not merely concerned, and entirely concerned, in Carthage, on the one hand, or in Rome on the other. They wanted the great things to be done by them. But that selfish interest, in entering, they did characteristically not call power but glory which meant immediately something like immortal glory. That could not be petty thoughts,



because they thought beyond their own narrow horizon. Power is a characteristically modern term, at least in this central position, and it became central through Hobbes and has very much to do with many other changes not altogether reasonable which go back to Hobbes. So, in other words, surely, say anything you want; say stamp collecting is as legitimate as to be a nuclear physicist. You can say anything. This is a free country. But the question is whether it makes sense on the basis of sufficient reflection which reflection must, of course, include what you yourself have seen with your own eyes and not only that which you find in the Journal of Abnormal Psychology. Now similar considerations apply to the aesthetic life. What does that mean? To be surrounded with beautiful things, I take it; have all kinds of nice things, paintings and furniture. Well, we know that and some people are very sensitive to that: that if there is something not beautiful in their environment, perhaps excluding their wives which is not such a simple thing, then they are very unhappy. And I can understand that one should be sensitive to beautiful things, but, on the other hand, if you see someone, for example, like Spinoza -- I saw Spinoza's room in the Hague sometime; it was like a monk's cell -- absolutely nothing at all. There was also nothing ugly because if you have only the bare necessities that cannot be ugly. And one can rightly say this is as reasonable a choice as the one where you have only, well, art objects of the first order, and perhaps very expensive ones. Now this is, of course, a silly thing: to call this the aesthetic life. And what Rothman must mean is something like l'art pour l'arte, art for art's sake: that is the highest. That, of course, leads to a further question, meaning the enjoyment or the appreciation of art or the production of art, which are two very different things. And one would have to open this very great issue -- that is a much more serious issue than the question of power -- this issue which was called by Plato the quarrel between philosophy and poetry. The implication of this quarrel was that philosophy and poetry are both very high in the order of human things and the question, the question, surely, is which deserves the right of way. Both cannot be equally high. But by all means one should regard this as an open question and apply one's mind to it. But one should not merely say, look, how many problems there are; let's give up. This is really not a rational reaction. I think the fact that he can put together power and the aesthetic life is in itself highly revealing and, on the other hand, in no way original. It is only a symptom of the key character of this value-free science: all values are equal in rank, whether that's power or whether it is -- whether it is power or the aesthetic life; they are equally good examples. They are not equally good examples if one uses one's head and does not believe that these issues have not been -- if one simply has a bit of education, if I may say so, and has read also things which are not mentioned in present-day social science periodicals, but, for example, if one really takes out some time to read these books in which these questions of what a worth while human life is.

It is surely necessary to raise the question, "Why science?" Science admittedly cannot answer this evidently meaningful question regarding the place of science in the economy of human life. If it does not have a necessary place in that economy, as tight rope dancing does not have a necessary place, the choice of science is arbitrary. It is fundamentally as arbitrary as the development or non-development of tight rope dancing. But if it has a necessary place then you have an objective value judgment, meaning science is good, which doesn't mean that's the highest good but that it is a good and this is, of course, impossible for the positivist to say. But if it does not have a necessary place, if it is not necessarily good, this has grave consequences which are not considered by the positivist. Science may be said to be the way to the

truth. And this is what they say. Science is the way to the truth. But they imply -- they do not even elaborate this properly: one may prefer myths of a certain kind, preferably pleasant myths I suppose, to the truth. That is what it must mean. Nevertheless, science is the way to truth because myth is defined, of course, as untruth. You may prefer a certain kind of untruth to the truth. Why not? Many people do. So if this is a proof that this is legitimate the proof is given.

The difficulty is this: science rests ultimately on premises, fundamental hypotheses, however you call them, not all of which are evident. They have the character of hypotheses, but of hypotheses which can never cease to be hypotheses, like the principle of causality; perhaps not the principle of contradiction -- this I think they all recognize although the account which they give of it is not very clear. Surely the principle of causality has this character. As commonly understood, science cannot admit, for example, to take the simplest but, in a way, the most important example -- it cannot admit miracles. No physicist or chemist or biologist is at any time permitted to say, when he is confronted with a wholly strange phenomenon -- to say this may be due to divine intervention. It is under no circumstances permitted. Now think, for example -- the question of the origin of the world. This has to be decided on purely natural grounds on the basis of the principle of causality as now interpreted. Even the question of the age of the earth. How old is the earth? Of course, we have no certain knowledge, but the rough knowledge which is now claimed is based on the principle of causality, i.e. it is based on the deliberate exclusion of the possibility of divine creation. I mean when you figure out, say, four billions of years that implies, of course four billions of years in a natural process. In a miraculous process it could have been the matter of a split second. Purely theoretically the traditional view, you know, according to which the earth, the creation, is now less than six thousand years old, is of course absolutely defensible on this ground. I do not say that I hold this view, but we are now concerned with a theoretical difficulty. If the principle of causality as now understood is logically arbitrary, then it follows the possibility of miracles is therewith admitted. The possibility is admitted, and that, of course has infinite consequences, whatever the value of this particular example may be, because -- that is clear -- science cannot prove the impossibility of miracles without question-begging. That it can never do, and therefore it is always understood, if everything has happened naturally these things are substantially correct. But that they did happen naturally and must have happened naturally can no longer be proven. That is the essentially hypothetical character of this point of view.

It follows then that science, which includes, of course, also all results of science is the choice of one world view among a variety of some. We may leave it at that, say, omnipotent creator versus no omnipotent creator, but there are, of course, many other variations. Science is based on the arbitrary choice of one world view among many. The only thing non-arbitrary, from this point of view, is the fact that we must choose. That is undeniable -- I mean, or we commit suicide. But we must choose. The fundamental phenomenon is the abyss of freedom. It's the only non-arbitrary phenomenon. Now this is the thesis of existentialism today and I can only say up to this point existentialism or historicism is superior to positivism because it faces a difficulty which positivism does not face.

(The question period which followed will not be transcribed in its entirety. The following was Dr. Strauss' reply to a question dealing with the principle



of causality):

S: Now they are not so illogical. I mean they say, we cannot establish the principle of causality; we operate on the basis of it. That's what they say. You see that is a long story which I cannot possibly develop. It has something to do with a man called David Hume who, in the 18th century, wrote what he regarded a demonstration that the principle of causality is not a rational principle, as everyone had assumed before him, at least disregarding some skeptics, but all: Hobbes, Aristotle, anyone had assumed that the principle of causality is rationally evident. Hume questioned it. And then Hume received a reply by Kant. These are, in a way, the most important facts in modern intellectual history. And Kant tried to show in a modified manner that causality is the rational principle but limiting its authority in order to preserve freedom. So he made a distinction between the phenomenal world and the true world. The principle of causality in the ordinary understanding is absolutely the rational principle, for the phenomenal world, but does not extend beyond it. That is a very crude but not misleading statement. And now the logical positivists are in between Hume and Kant. They accept Hume's criticism of causality, but they make this objection -- they usually are not very clear in their criticisms of Hume because that is a kind of sacred cow where one must not say too much -- you know? -- a kind of respect, reverence. But what they mean is this -- it comes out indirectly -- Hume's doctrine of causality is a psychological doctrine, i.e. it explains the genesis of the sense of causality by virtue of which we say, whenever we see a corpse, who did it? That has no necessity in itself, but we are all so conditioned that when we see a corpse we say who did it. And they rightly say this psychological genesis does not explain the validity, the validity. This distinction between genesis and validity they learned from Kant and his successors. This they also don't say but it is true, and therefore their doctrine is then the principle of causality is the basic hypothesis. That's its logical status. How sense of causality arises psychologically is of no interest to the theory of science; that is a psychological problem. That is roughly the position they take.

(Dr. Strauss now turned to historicism. The transcript resumes at the beginning of a discussion of Jakob Burckhardt.)

Now I take as an example of a theoretical historicist the famous Swiss historian, Jakob Burckhardt. His book, with a German title, Weltgeschichte Über Trachtungen, Reflections on the History of the World we can perhaps say, is one of the most outstanding documents of historical reflection in the nineteenth century. Now Burckhardt asserts the superiority of the historical consciousness. It is universal. For example, only now do we know and understand the dramatic poetry of all times and countries. In earlier times people knew, perhaps; the dramatic poetry of their own country and maybe Greek and Roman. But now, Hindu, Chinese, what have you: all dramatic poetries of all time; true universality. We have better theoretical knowledge of what was good in all dramatic poetry and why it was good. An essential ingredient of that universal historical knowledge is this: that it knows that every human phenomenon belongs to its epoch. So, in other words, when you have a Japanese drama you see it in its connection with Japan and do not merely look at it as a work of art which you enjoy or do not enjoy. We are the first to judge the individual with a view to his precedence, to his time. We understand him historically. Say, we see Plato as a Greek and not simply as a sage in general. In other words, historical understanding is genetic understanding, if genetic understanding of a certain kind, and this implies, however, that historical



understanding understands the essential limitations of every human phenomenon. "Ideals do not live eternally." Every idea has its time. Ideals change; the human mind changes. That means that ideals are not the highest.--they are produced and decay--but the process which produces the ideals, the historical process. Philosophy is -- that Burckhardt does no longer say but that is the inevitable consequence -- philosophy is the understanding of the historical process and nothing else; not, for example, of nature because nature becomes known (quasi) by natural science which is an activity of the human mind and historically relative. Philosophy is the understanding of the historical process: of the constants in it, of the recurrent and typical. Philosophy is the contemplation of historicity.

Now the basis is the change of ideals. This does not mean that the ideal, whatever it may be, is replaced by pseudo-ideals. This, of course, was always admitted: that this could happen. No. There is not the true ideal. No cause, no cause whatever, deserves complete and final victory. Every cause, however noble, is defective, and therefore if it perishes it deserves to perish.

There is another consideration. A variety of causes is essential for vitality, for life. Without a variety of causes there would be death. And this variety is exactly the characteristic of Europe, according to Burckhardt, and the unqualified superiority of Europe is due to the fact that it has and has, in a way, always possessed a variety of ideals, a variety of causes. You see that Burckhardt is an old-fashioned liberal; an old-fashioned liberal for good and ill, but of course not yet a relativist, because he naturally distinguished between high and low, good and bad.

There is, then, no absolutely valid ideal or cause. Here we come across a conflict between theory and practice because as acting men we must take sides, we must dedicate ourselves to a cause. This could mean that the theoretical man as theoretical man, where we do not take sides but look dispassionately at all causes -- we are freer than as practical men. In a way, Burckhardt admits it. But he denies that the point of view from which man is freer -- man is better or higher, because man owes his worth to dedication, to the dedication to a cause, to a specific ideal. All changes and causes are perishable, but in spite of all changes of ideals or causes man can always dedicate himself to a cause, a noble cause, one among many, and this dedication makes him morally respectable. Man reaches his height only through dedication to a controversial cause, through struggle. The danger to man is uniformity of cause, i.e. security. Burckhardt was an old reactionary who opposed the egalitarian socialist movement of the 19th century with all his power. He belonged to the patriciate of his Swiss city of Basel; and therefore this egalitarian socialist movement is not a cause strictly speaking because it is fundamentally based on egoism, on the service of egoism, not dedication. And the only hope in the face of the egalitarian socialist movement is nationalism and particularism. This is what he occasionally said.

But we are here concerned only with the theoretical question. What becomes of theory, of theory in the widest sense, of science, on this basis? And that means, in Burckhardt's case, what becomes of history? The historian cannot be a partisan. He knows that every cause is defective. Yet he cannot be objective. He cannot be objective--you see, he makes here a criticism of the ordinary view -- because there cannot be objectivity regarding the selection of objects. The objects which a historian chooses, and every historian -- I mean, no historian can be a universal historian, literally understood, studying

the history of the human race from the very beginning up to now from the point of view of religion, economics, politics. That animal doesn't exist. So he must make a selection. The selection cannot have an objective principle, and therefore historical research is fundamentally of qualified objectivity. History, as he puts it, is in every case a report of one age about what it finds remarkable in another age. So when Durckhardt wrote a book on the age of the renaissance or on Constantine the Great, that is a report of a 19th century European liberal of very high education about the renaissance, Constantine the Great. A mid-twentieth century American, say, of liberal persuasion in the present-day sense, would write two entirely different books. It is impossible to say, "This is true -- this report is true and the other is untrue." He can only say -- well, there are certain external criteria of competence; they are uninteresting. But where the books differ you cannot say, "This is the true account and the other is the untrue."

Now let me state the difficulty somewhat more precisely. Nineteenth century history is universal history in a way in which no history before was universal, because it does not only intend to deal with all peoples and cultures, but in every respect: it is political history, cultural history, economic history, history of art, and what have you. We have better knowledge than men of the past of what is good in the old dramatic poetry and why, Durckhardt says. But -- and now comes the crucial point -- this enormous theoretical progress is accompanied by the vulgarization of taste, by the victory of mass taste. The high cultures were, so to speak, narrow. Our lack of narrowness, our intellectual freedom, is degrading. Look at the many styles with which we are familiar and especially look what they did in the last quarter of the nineteenth century especially when they tried to restore all the styles, preferably in a single post office or bank. So the many styles make impossible the great severe style which is characteristic of all high epochs. More simply stated, the universalism of history, which is the great theoretical progress, is bad for culture, is bad for life.

The universal history avails itself of the possibility inherent in reason to stand above all causes and cultures: looks down at them theoretically. This neutrality ruins wholehearted dedication. A man who stands above all these causes and who has become impregnated with a sense of the essential defectiveness of any cause can no longer wholeheartedly dedicate himself to any cause. The universalism of history is morally ruinous, ruinous to life.

The second point: is universalism compatible, at least, with good history? So, in other words; if this is, as history, by far superior to what was done in the past one could, perhaps, say this would compensate us for its defects. But we have seen that Durckhardt admits the subjectivity of history due to the subjectivity of selection. All history is relative to a specific standpoint, to a specific time. It is not truly above all time. It is not truly objective. So we do not even get from it what it promised, to say nothing of the things which it didn't promise and which it gives.

Now the third point: the historian is not bound to any cause. He is a relativist, to use a word which came up after Durckhardt. But Durckhardt makes the distinction -- Durckhardt in contra-distinction to the present-day relativist -- between causes or ideals proper and mere egoism, hedonism, utilitarianism. These are no causes because they are either -- egoism is simple egoism and the other positions deal with man only as an egoistic being, fundamentally. What makes man respectable is dedication, i.e. something transcending egoism.

We may call this position a formal ethics. There is a principle of excellence, in Burckhardt's case dedication, which does not have any specific content. For example, it is indifferent to the distinction between monogamy and polygamy, to the difference between divine right of kings and republicanism, and any other substantive cause, because you can be dedicated, as history shows, to any of these causes.

Now this formal ethics, then, relativizes all substantive ethics, all principles of high culture, because a high culture is never merely dedication but dedication to something. A high culture necessarily absolutizes itself. This famous complaint that the Greeks called the non-Greeks barbarians, and similar distinctions are made by the Chinese and, I suppose, also by the Hindus and everywhere: the absolutization of itself -- that was always so in the past. Since historical consciousness mediates all cultures preceding the historical consciousness, if we want a high culture again we need a new high culture, a high culture of an entirely different character than all previous cultures; because it presupposes the historical consciousness. This does, by no means, come out in Burckhardt himself but it is somewhere in the margin. Now the reason is this: while Burckhardt's original, fundamental, conceptions were, of course, his own, having come from his long and important historical studies, there suddenly appeared a young professor, thirty years younger than he, I believe, who revered Burckhardt, but who, because of his particular qualities, came to exercise some influence on Burckhardt; and that was Nietzsche. He came as professor to Basel around 1869. Now it is one of Nietzsche's early writings called "Of the Advantages and Disadvantages of History" in the book, Meditations Out of Season, which I have to consider and which marks the conscious transition from theoretical historicism to radical historicism.

(The remainder of this lecture, on Nietzsche, was substantially a duplication of material on which Dr. Strauss has either written or lectured in previous courses. The latter courses included two specifically on Nietzsche, as well as lectures in earlier courses on natural right or on classical political philosophy. All of these are transcribed, except for the Nietzsche course of Spring 1962, which will be transcribed at some time in the immediate future).

(The fourth lecture of this course included material on which Dr. Strauss has already written or lectured and it will not be transcribed. The transcription now proceeds immediately to the fifth lecture.)



Lecture 5: October 22, 1962

... briefly repeat what I said in the introductory part of this lecture before I turn to my subject. When speaking of natural right today one must never for one moment forget that natural right is today generally rejected and one must consider the grounds on which it is rejected. The grounds are twofold, corresponding to the two most powerful schools of thought today: positivism and historicism. Positivism turns into historicism because the fundamental premise of science proves to be a hypothesis which can never become more than a hypothesis and which owes its power or validity to a decision, to a historical decision. Hence, the fundamental reflection must consider this historical decision, our absolute presupposition, in the terms of Collingwood, in its connection with other absolute presuppositions. Philosophy or metaphysics becomes history, if history of a certain kind. But historicism in this sense transcends, indeed, all absolute presuppositions. It looks at them from without. But one can raise a question: with what right does historicism exempt itself from the historicity of all other human thought? If this reflection is made theoretical historicism turns into radical historicism. This means there is not the true perspective, the absolute horizon, and as a consequence there cannot be historical objectivity in the strict sense. One cannot understand the thought of the past as that thought understood itself. One can only understand it differently than it understood itself, not better than.

Now I have discussed briefly the difficulties and absurdities to which this view leads. It seems clearer and safer to assume that there is, indeed, the horizon, the right perspective, or the common sense. But if there is such a thing it is surely not immediately available at any time for what is immediately available at any time differs from time to time, from epoch to epoch, from culture to culture. Yet this is in itself compatible with the possibility that at every time man can ascend from the immediately available, from the prejudices of his time and place, to what is no longer prejudice, to the unquestionable and indubitable. Such a step was taken in an epoch-making manner by Descartes. The title of his First Meditation: "About Those Things Which Can Be Called Into Doubt" and the first answer is everything should be called into doubt and this doubt should take place, this absolute doubt should take place once in one's life. In this way Descartes discovered the ego; the "I think; I am," and this position taken by itself is so-called solipsism, the view that we are certain only of the fact that we have certain ideas, certain thoughts, but nothing more. When we speak, for example, of a tree, strictly speaking I have only the thought of a tree or the thought of other human beings. My own actual thought is the only thing which is certain. But this solipsism is not credible, even if it were theoretically irrefutable. Descartes himself has no doubt that he lives with other men, that he has taken the details of his doubts, for example, say from Cicero, and that he writes a book which is meant to be read by other human beings. There is a printer and book-sellers and, of course, quite a few other things. So he does not seriously doubt that for a moment. We all assume something and must assume it without necessarily understanding it. Our whole life rests on such a fundamental reliance, to use the Platonic expression. The indubitable is that without the acceptance of which every human act, and in particular philosophy and science, do not make sense at all. This is the premise that a human being born from human beings, brought up

by them, living with them on the earth where there are also stones, plants, brutes and so on, under heaven. This is the starting point of all philosophy or science in particular regardless of whether it accepts or rejects natural right. From this situation all primary questions arise. That is to say, all questions which do not yet presuppose answers found by philosophy or science. And furthermore, in this primary situation in which we all can find ourselves on a moment's reflection there is a hierarchy of questions: important and unimportant questions, permanent and momentary questions; and everyone can see that. For example, a question of the moment: should we wage -- "we", some tribe of course, not this country -- should we wage a war against our hereditary enemy now or next year? Question of the moment; implies that winning a war is good. This assumption, winning a war is good, is, of course, not limited to the present situation anywhere or at any time. All thoughts about now, here and now, are based on something which underlies them, something -- permanent and fundamental opinions regarding what is good in the widest and loosest sense of the word. These opinions are no longer questioned. For example, the opinion that winning a war is good is ordinarily not questioned, but the question is can we win the war. But on reflection these opinions prove to be questionable and the question, simply stated, is what is good for man as man and obviously a question of concern to man as man, whereas the question regarding the number of stars or of species of animals is not in itself an urgent question. It could become it under certain circumstances but the question of what is good for man as man is urgent for man as man. But, of course, the fundamental opinions are not necessarily questioned. If and when they are questioned philosophy arises. This much as a summary of my introduction. Now I turn to the subject; the connection will become clear -- the connection with natural right problem and what I just said will become clear soon.

Now what is natural law, let us say first. Natural law is a law by nature, i.e. not by human establishment. Furthermore, a natural law must be known to be law by nature. This knowledge must be natural. Otherwise that law could not be binding, i.e. it could not be a law. This does not mean, however, that the natural law, if there is such a thing, is by nature known to be a natural law. If this sentence is a bit hard to follow I repeat it: the natural law is not by nature known to be a natural law. I illustrate what I say by a quotation, a very famous one, taken from Sophocles' *Antigone*, verses 449 following. Antigone is speaking -- or first Creon: "And you," (you, Antigone) "dared to break these laws" which Antigone had broken. Antigone: "Yes, yes, for these laws were not ordained by Zeus and justice, who sits enthroned with the gods below, she did not enact these human laws, nor did I deem that thou, a mortal, couldst by a breath null and override the unimutable, unwritten laws. They were not born today, nor yesterday. They die not and none knoweth when they sprang." The law of Creon is not valid if it contradicts this other law, these unwritten and certain laws of the gods. But Antigone also says, as you have heard, these laws live always, at every time, at all times, and no one knows from where they came. You see a difficulty here: on the one hand they come from the gods; on the other hand, one does not know from where. She surely recognizes a law higher than human law but this higher law is not necessarily a natural law. Here there is no distinction made yet between a natural law and what later on came to be called a divine positive law, a law which is not natural but is valid because it is established by a god or gods. We keep this in mind: a higher law is not necessarily a natural law and therefore when you have -- you have in this country a tradition, a higher law tradition, this does not necessarily mean, although for a considerable stretch it surely means, a natural law.

Natural law presupposes, obviously, the concept of nature. The knowledge of natural law as natural law presupposes awareness of nature. Such awareness is not coeval with man and the simplest proof I have, and I'm sure those of you who know other languages have other proofs, is that of the Old Testament. There is no Old Testament term for nature. Nature is not by nature known, as we can say trees are by nature known or grass or whatever it may be in a given country. Those things -- men living there know them without any effort. Nature had to be discovered. We do not know when and by whom it was discovered. The first mention of nature in -- known to us -- occurs in Homer's Odyssey, and Homer mentions nature, in the whole work of Homer as it has come down to us -- nature is mentioned only a single time. This passage is of utmost importance, not merely because it is the first occurrence, but because it is made reasonably clear there what is meant by nature. In the tenth book of the Odyssey, Odysseus tells of what befell him on the island of Circe, the goddess-sorceress. Circe had transformed many of his comrades into swine and locked them in sties. On his way to Circe's house to rescue his poor comrades Odysseus is met by the god Hermes who wishes to preserve him. He promises Odysseus an egregious herb which will make him safe against Circe's evil arts. Hermes -- I quote now -- "drew a herb from the earth and showed me its nature. Black at the root it was; like milk, its blossom. And the gods call it moly; hard is it to dig for mortal men, but the gods can do everything." The gods can do everything: what does this mean? The gods can dig the herb with ease, for example. The gods' ability to dig the herb with ease would, of course, be of no avail if they did not know the nature of the herb. The nature: what its looks and its power. The gods are omnipotent because they are not indeed omniscient, but they are the knowers of the natures of the things, of natures which they have not made. Nature means here the character of a thing or of a kind of thing, because there may be many such herbs around; the way in which a thing or a kind of thing looks and acts and the thing or the kind of thing is taken not to have been made by men or gods. If we were entitled to take a poetic utterance literally we could say the first man we know who spoke of nature was the wily Odysseus who had seen the towns of many men and thus come to know how much the thoughts of men differ from town to town or from tribe to tribe. I will make this clear in the sequel.

Now the Greek word for nature, physis, seems to come from a stem, phyon, which means, to grow. The looks and powers which a thing possesses it has come to possess. This herb, for example, didn't have it when it was a seed or when it was not yet fully grown. A thing possesses these looks and powers only when the growth is completed, at the term of the growth. They belong to the thing; they are the thing. Different things or kinds of things have different natures. Take such a simple popular phrase, "x" takes like a duck to water: a duck takes to water by nature, which doesn't mean that only ducks do it but ducks are particularly well known examples. Or if we say something goes against a man's grain -- you may try to brush your hair against its grain. Grain here means how the hair naturally grows, and you brush against it, against the grain. So we -- in other words, these experiences on which the notion of nature is based are still immediately accessible to us. This also implies that not everything is natural. Something may be against the nature, against nature. For example, if you brush against the grain. It may be unnatural. That is an essential implication of the Greek notion of nature.

Now there are things which are not natural without being, however, unnatural. For instance, a chair. No one in his senses would call a chair as chair unnatural but it is not natural. Why is it not natural? Simply: chairs do not



grow but are made. Nature is understood from the very beginning in contra-distinction to art; art meaning not art with a capital "A" but every human know-how of bringing into being things which would not be without human production. Yet it is understood that art always depends on nature and not vice versa; no artifact without natural materials, but on the other hand there are quite a few natural materials which do not have to be tampered with, improved, by art. Now both the things which are by nature and those which are by art are in themselves. What does this mean? I read to you a passage from Collingwood which indicates a difficulty here which was not seen in this way in ancient philosophy. In his autobiography, page 44, we read. One of his antagonists at Oxford, Cook Wilson, said, "Knowing makes no difference to what is known" and Collingwood asserts this was meaningless.

I argued that any one who claimed . . . to be sure of this, was in effect claiming to know what he was simultaneously defining as unknown. For if you know that no difference is made to a thing  $\theta$  by the presence or absence of a certain condition  $c$ , you know what  $\theta$  is like with  $c$ , and also what  $\theta$  is like without  $c$ , and on comparing the two find no difference. This involves knowing what  $\theta$  is like without  $c$ ; in the present case, knowing what you defined as the unknown.

Is the difficulty clear to you? To know a thing as it is in itself, meaning as it is wholly independently of our knowing it, we discover it. Our discovery does not affect it. Now Collingwood, and he is not the only one who says that -- this is impossible to ascertain because we know the thing only as discovered. How it was prior to the discovery or when it is not viewed: it is unknowable. How then can one say that the things which are by nature or by art are by themselves? How can we know that they are not by virtue of our perceiving them and hence that they are merely phenomena and not things in themselves? This plays a considerable role in modern thought, also of course in positivism, although it is perhaps not stated there. But this conclusion, it seems to me, does not follow. From the fact that we cannot know how things are in themselves in the sense as not affected by our perception it does not follow that they are how they are by virtue of our perception. It can as well follow that our perception perceives them necessarily as they are in themselves. In other words, this fact brings us up to a fundamental question which cannot be simply decided. The alternative is this: all things as known are relative to man, man's perception. The alternative is man is the only earthly being which can know all things as they are. On the basis of this simple discussion no decision can be reached. Yes?

Q: I thought I understood you to say that Collingwood is arguing against a statement which said that you can't know what a thing is without knowing its fundamental characteristics.

S: No. Well let me repeat to you again the statement literally: "knowing makes no difference to what is known." Something is in itself what it is regardless of whether one knows it or not. And Collingwood says this is an unprovable thing because we know the thing only as known. Now but the conclusion which Collingwood draws from it, namely an essential relativity of all things to man with the implications they differ in their relation to other beings, to frogs, to horses and what not. This is only one possible answer. The other answer is that man is the only being which can know them as they are. In other words, to use this lingo, the difficulty is as compatible with "idealism," in this sense, as with "realism." I mention this only in passing lest you misunderstood what

was meant by the assertion. We see things -- that dogs are by themselves. They are not made by man. Chairs are made by man. But yet dogs and chairs have something in common and what they have in common will appear from the following consideration which is absolutely necessary if we want to understand what nature primarily means. The dogs and the chairs are not by virtue of our holding them to be. Whether you hold them to be or not does not make any difference to them. And this appears if we look at those things which are only by virtue of our holding them. For example, unicorns. Yes? Unicorns. Some people say unicorns are, just as there are dogs and chairs. Now then we say perhaps yes -- some outlandish place -- but then we talk to people who have been there and we find out no one has ever seen them and then we assume that unicorns are only by virtue of man's holding them to be, not in themselves, as chairs and dogs are. Is this clear? The innocent example. Cows are sacred. This is grammatically like cows are, say, white, or cows give milk. But cows give milk -- that is -- we all have seen that or we know it from trustworthy people who come from the country; and cows are white or brown or black even may be. But cows are sacred. Are they sacred in themselves? They are sacred for the Hindus, not in themselves. Or the dead must be cremated. That is also by virtue of men holding that, not in themselves. There is a third kind of things apart from the natural things and the artifacts: the things which are by nomos.

Q: (Requests a repetition of what was just said).

S: There are things which are by nature, physis. There are things which are by art, artifacts. And there are thirdly things which are by nomos. Now nomos is usually translated by law or custom but it has a much broader meaning than law and custom has today. Everything which is by virtue of human establishment; agreement of men holding it to be. I cannot translate it better. Now this, the distinction between nature and nomos -- I will now use the Greek word -- is much more important, much more fundamental, than the distinction between nature and art. The distinction between nature and art is obviously necessary to make. It does not in itself cause any difficulty. Nature and nomos point to different kinds of regular behavior. Dogs bark. Hindus do not eat beef. It's all regular behavior. Prior to the discovery of nature no fundamental and explicit distinction between these kinds of regular behavior was made. All things have their custom or their way. The sun has its way: rising in the east, setting in the west. Dogs have their ways. Ducks have their ways. The Hindus have their ways. These are all -- ways understood here always in the same manner. The discovery of nature means the realization of the fundamental difference between these two kinds of ways. Or differently stated, the discovery of nature means the splitting of the original notion of way into nature, on the one hand, and nomos, on the other. That this was a very great step you can see from the fact that this distinction is not made always and everywhere. It is not made, to take the example where I have first hand knowledge -- it is not made in the Old Testament and this has had very grave consequences. From time to time people arose in the West who, guided somehow by the Old Testament understanding of things, denied that there is a nature. Everything is custom. I mention two great names in the West who in different ways do that: Pascal and David Hume. They do it in very different ways but these are all -- and there are also traces, quite a few traces of it in the Middle Ages.

Now the nomos determines not only action, what men do, but also thoughts as well. Naturally it does it because there must be given a reason why you should abstain from this or do that. The nomos necessarily contains thoughts regarding the gods, regarding the whole. The nomos in its way comprises the

whole. It is, to use a modern word, a weltanschauung. A nomos is much more than custom; a way of understanding the whole. It is authoritative opinion about the whole. Now there is a variety of such opinions. The Greeks have these opinions; the Persians, those. And if you read Herodotus you would see that this is a major concern of his: to see how the nomos differs from tribe to tribe, from country to country. Primarily everyone belongs to his tribe and does not know anything but the authoritative opinion giving his tribe its character, and also justifying the actions commanded of obedience. But then some men meet other tribes. The classic example, a mythical example in a sense, is Odysseus, the traveler, and that the first man we know of who used the word nature was a man who had traveled so much, who had understood the minds of many towns, is surely no accident.

Once one becomes aware of the fact that the authoritative opinions are only opinions one is necessarily concerned with the true account, with the account not dependent on nomos, on the agreement of this or that tribe, but an account which corresponds to nature. And from this we see why the distinction between nomos and nature is so crucial. Art presupposes nature. Nomos too presupposes nature, but nomos also conceals nature because it asserts that these and these are the true principles, as they were later on called. The distinction between nature and nomos is coeval with philosophy. We cannot prove this entirely for the very simple reason -- because we have hardly anything left of philosophy prior to Plato, but there is sufficient evidence in some of these earlier philosophers which shows that they knew it. At any rate, the distinction between nature and nomos is not a notion peculiar to the Sophists, as you read in many text books. The proof is very simple. The traditional distinction between natural right and positive right embodies the distinction between nature and nomos. Nor can one even say -- this in passing -- that the Sophists exaggerate the distinction between nature and nomos into an opposition. You only have to read the fifth book of Plato's Republic to see that here such basic institutions as private property and marriage are declared to be by nomos only and not by physis. I have to take up the question of the Sophists later, but this only in passing in order to make clear that it is necessary to reconsider the text book versions.

Q: You made a statement a few minutes ago about the way dogs bark and Hindus abstaining from the eating of beef. I'm a little confused right now. When you say that dogs bark the way they do because of the nature -- that it's inherent in their nature to bark and that the Hindus, I'd say, eat beef -- is it by nature that they eat beef?

S: No, you misunderstood me. What I wanted to say is this. The examples were the correct ones. Before nature is seen as nature men must have had some equivalent for that and I say the equivalent for it are such notions as, in our language, regular behavior, but in a more natural language, way or custom. Now all things have their ways or customs and on this level the way of the Hindus, the way of the Jews, the way of the Greeks, the way of the or whatever have you, is a way as much as the way of dogs, of cats, of . That's all. And I wanted to make clear what the discovery of nature means -- to make somewhat clearer at any rate that the discovery of nature means a splitting up of the primeval notion of way or custom into nature on the one hand and nomos on the other. Good.

Now on the basis of the distinction between nature and nomos, which is coeval with philosophy, the first question of concern to us is this. There are things which are by nature good for man. For instance, for health and strength.



A diet of hemlock, for example, is obviously not good for man by nature, whatever even the medical profession might have agreed upon. I mean, if you -- is this improper? Think of this drug they spoke of a few weeks ago. You remember? With a "Th" it begins; I forgot the name. Good. But there are also things which are good for nature, for something called happiness, for man's happiness. For example, things which drive a man crazy -- drive every man crazy -- would be bad for him by nature. In other words, if there are natures there are things which are by nature good for man as there are others which are good for dogs. The key question is this: does what is by nature good for man include something like right, right in the sense of justice? Does it include something like noble or base or is everything called right and noble merely conventional? The clearest statement of this issue, but only in the most general terms, you would find in the tenth book of Plato's Laws, page 889. Now both answers, there is a natural right and there is no natural right, were apparently given from the very beginning, prior to Plato that is to say. But -- and here I have to say a word about the difficulty -- we must never forget that Plato is the first philosopher from whom we have books or any other writings. Prior to Plato we have books by non-philosophers: by poets, historians. Or else fragments of philosophers. And this is, of course, a terribly dangerous thing: to form a judgment on the basis of fragments. That you can see from a simple consideration. How well are they vouched for? How well are they selected? From what point of view are they selected? What was the context in which these individual sentences occurred? We do not know. We have also reports about these earlier philosophers and here we are on somewhat safer ground if the reporter is known to be a man of judgment: say, if the reporter should happen to be Aristotle we would say, well, we couldn't have a better reporter. Whatever some people say -- there are people who say a philosopher is the worst reporter about other philosophers, you know, because philosophers try to understand and they dig deeper and then something comes out which no one else has seen, that's paradox, and therefore it's wrong. And so that a simple, stupid copyist would be a much better reporter, which I'm afraid is not true because without judgments you cannot report. But at any rate I only wanted to indicate the difficulty with which we are faced when we come to this point.

Of course, I cannot go into this infinite question. I will only say how I proceed. There is a famous collection of the so-called pre-Socratic philosophers made by Diels and there is an English translation of the fragments by Miss Freeman, Ancillary to the Pre-Socratic Philosophers, and we will simply look at some of these fragments. But someone had -- you had a question.

Q: (Inaudible).

S: Yes, yes. That is a common view. All right. I would like -- I shall gladly, that you see that there is nothing very difficult about that -- I will read to you a passage from Aristotle's Politics, if you don't mind, one of the most popular passages -- popular, I mean should be popular, passages in that work. But you will easily see that it is not very difficult to understand. It is at the beginning of the seventh book and I'll just read it to you.

We put all things good into three groups: external goods, goods of the soul, and goods of the body.

Does this make sense to you? Yes?

O: Yes.

S: Oh, good enough. Sure. Fine.

Surely nobody would deny that the perfectly happy are bound to possess all three for nobody would call a man perfectly happy that has not got a particle of courage, nor of temperance, nor of justice, nor of wisdom, but is afraid of the flies that flutter by him; look what a misery; cannot refrain from any of the most outrageous actions in order to gratify a desire to eat or to drink; ruins his dearest friends for the sake of a farthing; and similarly in matters of the intellect also is as senseless and mistaken as any child or lunatic. Although these are propositions which when uttered everybody would agree to yet men differ about amount and degrees.

But this is the rough notion. May I state it in my own simple language, what they meant by happiness? In the first place, a state of contentedness. But we all have seen people, boonies they are vulgarly called, who are contented, smiling all the time. But no one would, except if he is very miserable -- would say, look, that is a happy man. So let us add a qualification to contentedness. Let us say an enviable contentedness, a contentedness of which you would say, "I wish I had that." Now this is a very rough and crude notion of happiness but I think it is still intelligible; it was always intelligible. And this surely needs a lot of refinement for refined people, but for unrefined people we might leave it as Aristotle said it. Now what's your point? So this is -- something like this is by nature good. I mean, a man who is constantly frightened -- today they have terrible words for that, you know, but why not call it by the simple word. Or a man who is completely unable to stand some thirst and hunger, and therefore so dependant, so dependant, a terrible state. You know, if he has self-control regarding these matters he's much better off. And also if he -- a man without any friends, a born traitor -- yes? -- sells everyone down the river: he cannot but be miserable. So these are elementary true verities which we all discover in the course of our lives, some of us very early; some have to go through all kinds of complicated bad experiences to learn them but they are all right. That is what is meant by nature good for man, apart from mere health and strength. Now your point.

Q: (Inaudible).

S: Yes, well that is -- oh, that is a very long question. This raises a number of questions, but do you really believe that someone can run for Congress on a record regarding his character like this: that he is afraid of every fly, cannot control himself for a moment, and so on? No. I mean there are such people; I have no doubt about it. But generally they are -- if they have all these qualities all together they cannot even have the career of Al Capone because he surely was not afraid so easily. But the question is -- here also the question arises, is the contentedness which Capone, from what I know of him, must have possessed -- is this an enviable contentedness or is there also something like an incompetence to judge as we assume in the case of the contented lunatic? That would be a question. Your practical answer is, of course, he is incompetent. I mean, your -- your answer is incompetent; you wouldn't for one moment seriously consider to become aligned with Capone or so or his successors, but still in the classroom you are open to all kinds of possibilities which wouldn't arise in life. What I suggest is that you make clear to yourself why these possibilities, this particular possibility which in classroom is an open possibility, is not recognized by you as a serious possibility in your life. I believe you should think about that. Then you would see that is not so entirely absurd.

Yes? All right, these two questions and then we go on. Yes?

Q: You said also that health is necessarily good for men. . . . There were medieval monks, for instance, who thought that suffering and . . . (?) was the best way to save their souls. . . .

S: Yes, but you must not forget that when Aristotle speaks he does not make any such special assumptions. I would have known more about these monks you speak about: whether they did not, for example, engage in helping the sick. And helping the sick -- and that means, includes also to help them to some extent in becoming well again. In other words, whether ascetic practices necessarily imply the view that health is bad. You do not have to go to any medieval monks. You have only to read Plato's Republic and then you will find a case of a young man who Socrates knew called Theages and Socrates says it is very good for him that he is sickly. All these statements permit exceptions. For example, a man who would engage in a career of good-for-nothingness of the worst kind might come to his senses by becoming sick. But this does not mean that sickness is not an evil. It means only under certain conditions it is a lesser evil -- no, generally speaking, sickness is a lesser evil than to be an abominable -- to have an abominable character. That goes without saying. But in itself it is a good thing. You were on it. You cannot take these things out of their context, isolated action. You would have to look, if I may say so, at the theory behind ascetic practices: whether they mean truly health is an evil simply or whether they mean only health is not so important, which is a perfectly reasonable thing. Or perhaps in many cases health is a danger.

Q: Well even if that is so, isn't it possible to determine naturally the conditions under which the exceptions ?

S: No, but without -- no. What is meant only by this is that there are some crude pillars established by our nature and if we do not recognize them we are completely -- become insane. We have no orientation anymore. To recognize the true order of these things: this requires longer experience and requires also some other things. But, to begin with, I think it is in no way a paradoxical statement if we say health is a good. If someone would say health is the greatest good then quite a few people would rise up in arms. And I have seen so many healthy good-for-nothings that I cannot see that health is the greatest good, but that it is in itself a good is something on which we all act most of the time. That's good enough. Aristotle's -- this statement is a popular statement reminding people only of the crudest signposts erected by nature. Yes? Were you the one?

Q2 (Inaudible).

S: I am familiar with that. The whole history of modern moral philosophy can be said to be a criticism of the notion of reasonable contentedness.

Q2: (Inaudible).

S: Oh, excuse me, if someone says dogs have six feet and convinces generations of men this doesn't refute me. I mean, after all, we have to look where this denial of the simple notion of happiness has led to and is leading us to. I mean, you cannot leave it at a simple bald statement. You have to consider all its consequences before you judge. The pursuit of happiness, as it came to be understood by many people, was still called pursuit of happiness, but now



happiness is something which is always evading man, always evading man, so happiness consists entirely in chasing something which cannot be reached, in movement. But the question is, is this not perhaps underlying what in present-day sociology is called -- how is it called again? -- the other-directed man: that status symbols, roles, take the place of the substantial goods. That is a long question. Don't believe that the mere variety of opinion in itself settles, proves the fact that no one of these opinions can be reasonable.

Q<sub>2</sub>: (Inaudible).

S: Well, if you would give me the time to try to show how Plato and Aristotle tried to find their bearing in these very complicated matters it would perhaps be a bit clearer. But we must go step by step and the only step we have taken hitherto is that the whole doctrine developed, both in modern and in ancient times, is based on some understanding of nature. Now the classical understanding of nature understands nature essentially in contra-distinction to art and to nomos, and in modern times this distinction gradually loses its meaning, but that is a very long process and we have to follow it. The modern thesis can be stated very simply, as it was stated by someone: nature is not a term of distinction, i.e. everything is natural. To brush your hair against the grain or following the grain is equally natural. You know, everything is natural. Have you ever heard that? That is today the so-called naturalistic view. Everything is natural. That is not -- I hope, if I do not have to answer too many questions, I may come to that point.

Now let us then try to discuss the issue of natural right prior to Plato. Now the fragments of importance to us occur in the first place in Heraclitus, a philosopher from Ephesus, Asia Minor. And -- you have it? Well, we don't have to read all these fragments which are relevant but some we must read. Let us read the second fragment. "One must follow the common. While the logos /let us say, while the true account/ is common, most men live as if they had a mind of their own." What this means is indicated in another fragment, number 89: "When we are awake we all have the same world, but when we are asleep each of us has his own world." So the characteristic of the truth is its being common. That doesn't mean that all men actually possess it; but all men can possess it, can agree regarding it. Let us turn to number 112, fragment 112. Yes; read.

O: "Moderation is the greatest virtue and wisdom is to seek the truth and to act according to nature, paying heed thereto."

S: So here, do you see, this is linked up now with nature. That common which is the truth is that which is according to nature, which is not only decisive for our thinking but also for our good action. Number 114.

O: "If we speak with intelligence we must base our strength on that which is common to all, as the city honors Zeus and even more strongly. For all human laws are nourished by one which is divine. For it governs as far as it will and is sufficient for all and more than enough."

S: Yes. Now here this common is suddenly called the divine nomos, the divine law; the source of all human laws. Here -- this is something like a natural law, although it is not called the natural law. To understand this cryptic remark we must know what Heraclitus teaches regarding the god or the gods and regarding law. Fragment 30.

O: "This order of the universe, or cosmos, which is the same for all. . . ."

S: You see again: the same for all. That is a guarantee of its truth. It is not one's private thing. Yes?

O: ". . . was not created by one of the. . . ."

S: Was not made. Created is a very difficult word. Was not made. Making like a chair is made. Yes?

O: ". . . or of mankind, but was ever and is and shall be ever living fire, kindled and measured and quenched."

S: Yes. So the god or gods do not make the cosmos. The cosmos is ever living fire which has its intrinsic measures. So the cosmos is not what we immediately see, the sun, moon, and stars, although that belongs to it, but it has a hidden source which he calls the fire and this fire acts according to measures. In another fragment he says -- he speaks of right, the goddess of right, in Greek dike. Read that -- 94.

O: "The sun will not transgress his measures. Otherwise the furies, ministers of justice, will find him out."

S: Yes. So in other words the sun cannot do what it wishes to do. It is subject to an order. There is a cosmic order. This is the right. Paragraph 53.

O: "War is both king of all and father of all and it has revealed some as stars, others as men. Some it has made slaves, others free."

S: Yes. So now what he formerly called fire and right or justice he now calls war. Very strange. This war generates. . . .

(Change of tape).

. . . gods, father and king of all, all gods. So it is not a god, properly speaking. But then in the sequel he makes clear something: that the difference between gods and men has a different character than the difference between free men and slaves. The difference between gods and men is not made but only revealed or shown. This difference is divine or natural. But the distinction between free men and slave is only made, not revealed. This I understand to mean it is due to nomos, meaning this: who is a free man and who is a slave depends on war in the narrowest sense of the term, on the outcome of human wars. But there is something broader, all encompassing, War with a capital "W", which characterizes all things; and this makes -- this principle which is both right and war at the same time, both peace and war because it acts by opposites and therefore in this way establishes differences. Now let us read one more regarding law: fragment 44.

O: "The people should fight for the law as if for the city walls."

S: Yes. The demos, the common people, but this can also mean the polis; the city, must defend the law like a wall. And now let us re-read number 114, which we read before.

O: "If we speak with intelligence we must base our strength on that which is common to all, as the city honor law, and even more strongly. For all human

laws are nourished by one which is divine. For it governs as far as it will and is sufficient for all and more than enough."

S: So whereas the city must define its law, its nomos, like a wall, those who speak with intelligence must strengthen themselves with a divine law much more than the city strengthens itself with the law. So all human laws are derivative from the divine law, but they are essentially different from it. What does this, however, mean? What guidance do we get? The most important fragment is number 102.

O: "For god all things are beautiful, good, and just, but men have assumed some things to be unjust, others just."

S: Now what does this mean? For god all things are just. . . . There is nothing unjust from the god's point of view. The distinction between just and unjust things is of human origin. It is due to human holding. It is by nomos. Differently stated, the distinction between just and unjust things is a partial truth which has meaning only for men. It is meaningful only within a limited human conduct. He does not explain that anymore and we have to think out for ourselves. How can he have meant it? Men live in cities. The polis is the social unit and the polis as this or that polis wages war. Now it is not possible to distinguish in principle between just and unjust wars. This very fact reflects on all other distinctions between just or unjust which are meaningful within a limited context but not simply. Think, for example, of what killing, lying, robbing and so on mean in peacetime on the one hand and wartime on the other. We leave it at that. So we have -- we cannot say more than this: that we have in Heraclitus a notion that all human laws are grounded in a divine law, but that this divine law is not directly the origin of the distinction between just and unjust. It came only indirectly -- only via man. We cannot say more than that. I refer you to a few more fragments because we cannot possibly read everything else. In Democritus, fragments 267 and 278, and in Gorgias, fragments 6 and 11. A most important source for -- we have very little of the pre-Socratic teachings regarding this question -- is the relatively recently discovered fragment 44 of Antiphon. Now Antiphon takes the view explicitly that all laws are mere -- that there is no natural right; that what nature dictates has nothing to do with right and wrong. Roughly, what is for man good by nature is good for him regardless of whether it is observed by other human beings or not. For example, if you eat poison or drink too much you suffer the harm regardless of whether anyone else sees you or not, but if you steal or kill you do not suffer harm, according to Antiphon, unless you are detected. Since the bad effects of justice depend on detection, on being known, on being observed, the effects are not natural but only by virtue of convention. This he develops at great length. It might be useful for you to read it.

One word about a very famous school prior to Socrates, the so-called Pythagoreans. We have here Aristotle's report. And the Pythagoreans taught, whatever that may mean -- I simply state it -- that the essence of being is number, and according to them a certain character of numbers is justice, which would clearly mean that justice is natural. This is of no very great help to us. It only illustrates the general assertion that the discussion of whether justice is by nature or by convention was discussed long before Socrates and both answers can be discerned. I would rather, right now, turn to a phenomenon which is always discussed when the question of natural right comes up and that are the so-called Sophists.

Now they are in the center of discussion for the simple reason -- because



there are so relatively long reports in certain Platonic dialogues and, so to speak, everyone reads them and so they are, of course, very well known. Now what are they? The Sophists? When we use the name we imply that they are not simply philosophers. Now they were men who educated human beings for pay and this was regarded as something most ungentlemanly. They claimed to teach the human excellence, human or political excellence, and to possess the art of teaching it. I will give you a very brief survey of one discussion which occurs in Plato's dialogue Protagoras. A young man from a wealthy family, Hippocrates, wishes to become a pupil of Protagoras, who is not an Athenian but happens to be there for some performance -- who wishes to become a pupil because Protagoras is most clever at speaking, and Protagoras is known as a Sophist. Naturally, a young man from a good family like Hippocrates does not study under him in order to become a Sophist. This is an undignified profession. A Sophist makes one clever at speaking. He seems to be a merchant, wholesale or retail, of food for the soul. He sells food for the soul. Protagoras himself says that what he teaches is to be prudent regarding the best administrations of one's household and to make a man as able as possible to manage the affairs of the city in speech and in deed. Other Sophists, as he indicates, teach reckoning, astronomy, geometry, and music. He himself does not do that. Socrates restates the claim of Protagoras as follows: Protagoras possesses the political art or science; the political art or science, meaning here the art of making men good politicians, and that he promises to make men good citizens. Now on the basis of Socrates' and Plato's critique the Sophist came to mean a man of sham wisdom in opposition to genuine wisdom. This is most clearly stated in Plato's dialogue Gorgias. At any rate the Sophists seem to have been the first men who claimed to possess the political art or science without being themselves politically active men; the first academic professors of political science. But they did not teach that art. That art enabled them to make men good citizens, able citizens, good statesmen, especially able to speak. This implies that they must have had some understanding of political things. Some political doctrine must have been underlying their activity.

The best report we have on that occurs at the end of Aristotle's Ethics. The Sophists claimed to teach the political things, Aristotle says. They claimed to possess the art of legislation: how to make laws. But they failed completely. They know nothing about these things, Aristotle says. First, they identify the political art with rhetoric or even subordinate it to rhetoric; and secondly, they say it is easy to legislate: you merely collect the famous laws and then you pick from them the best. Now what does that mean? They say out from the most renowned laws, the laws recommended by praise, by doxa, by opinion. They collect the renowned laws and select from them by standards commonly admitted. There are no other standards. This would imply there is nothing by nature right regarding their standards and this thesis seems to be, indeed, the case. Somehow they seem to have assumed that what is by nature good is the pleasant and following that -- at least that is Socrates' contention -- they were led to the conclusion that the best life is the life of the tyrant, because the tyrant can have every enjoyment he wishes. But more generally stated, because not everyone can become a tyrant or even if he is of tyrannical timber the situation may be most unfavorable for him, the exploitation of the common good, the common, for one's private use. And the means for that is, of course, a certain kind of rhetoric up to the present day. You do not see Mr. Accardio without seeing at the same time his lawyer with him. I mean, forensic rhetoric in case of detection is absolutely necessary if you pursue your own concern without any regard to the law or, differently stated, if you are bent on exploiting the city for your private purposes.

But it would be unfair to consider only this quasi-criminal implication of Sophistry, although one must not deny it. There is also another side. Xenophon, the other famous pupil of Socrates apart from Plato, gives the following account of the pupil of the Sophist, of Gorgias, a man called Proxenus, a friend of Xenophon. Now here Xenophon is the pupil of Socrates and Proxenus is the pupil of Gorgias. Now Proxenus, the pupil of Gorgias, was very good at ruling gentlemen, who can be ruled by praise and blame, i.e. by speech, by rhetoric, and rhetoric he learned from Gorgias. But Proxenus was absolutely unable to rule the many who cannot be ruled by praise and blame, who need coercion. This fully agrees with what Aristotle indicates at the end of his Ethics. The Sophists were not aware of the difficulty of politics. They were not aware sufficiently of men's recalcitrance to speeches. They were not serious. They did not understand the seriousness of politics. No greater mistake can be committed than to identify the Sophist with Machiavelli. Machiavelli knew these difficulties very well.

The most important point for us is this: that generally speaking the Sophists did teach there is nothing right by nature, and it is surely confirmed by Plato's dialogue Protagoras and the Theatetus, which is connected quite obviously with the Protagoras. The Protagoras develops the following myth: man was formed within the earth by Epimetheus, the brother of Prometheus. Epimetheus means "thinking afterward"; not thinking prior to production. Man was formed by non-rational activity and hence, of course, he's very poor off by nature. He needs arts. Without arts man is the poorest of all creatures. These arts, however, are not gifts of gods as the myth says, but they had to be stolen by Prometheus. In other words, man saved himself only by a rebellion against the gods. Only dissatisfaction with his nature makes human life possible. That comes very close to certain modern notions. I refer you also to the first book of Plato's Republic where Thrasymachus almost says that the human body is by nature bad and becomes good only through the art of medicine. But still, this is not enough, to have arts, because men must live together. A third thing is needed: justice, which enables men to live together. This is presented as the gift of Zeus, but in the context this means justice is strictly conventional. It does not depend on art in any way, on instruction proper, but merely on praise and blame and, last but not least, punishments. In other words, justice is only by virtue of social conditioning, in modern language. It is not by nature or by art. This view is questionable only on one very minor ground. In Plato's dialogue Protagoras one Sophist, Hippias, says: "You all here are kindred and follow citizens by nature, not by nomos, for you are by nature similar. The nomos acts in many respects violently against nature." Now what does he mean by that? Why are those present -- he doesn't say all men are kindred. He says all those present here. They are kindred because they know the nature of things or because they are wise men. The only natural society is the community of the wise. Here some natural right is recognized, but the thought is not elaborated enough so that we can draw any further conclusions from it.

The Sophists, I would venture to say, are not philosophers, not genuine philosophers. We have today a word which characterizes them very well. They are intellectuals. Now naturally the concept intellectual, which is used rather uncritically, is a bureaucratic or Marxist conception and I do not doubt that within these contexts it is a very meaningful one but whether it is meaningful without that is a long question. So we leave it at that because I have seen -- in a former lecture I said: the characteristic of the intellectual is that you cannot distinguish, as you can in the case of the physician, for example, between a genuine physician and a fake physician -- you cannot distinguish



between a genuine intellectual and a fake intellectual. That seems to indicate the difficulty. But then I have read in a column of a British columnist,

I believe is his name, who spoke of certain bogus intellectuals. So I probably have to reconsider this, although he didn't tell us what his criterion was by which one distinguishes the true -- perhaps the bogus intellectual is a man who pretends to read books without ever reading them. You know, appears to. I do not know. He didn't define it. For the time being we leave it at this weasel word. Yes. I think it would be unwise to go over now to Socrates.\* This Hippias who is presented by Plato as a very foolish, the most unintelligent, Sophist occurs in a conversation with Socrates in Xenophon's Memorabilia, Book IV, chapter iv, and this dialogue deserves a brief report.

\*(I could only like to mention one point).

Socrates asserts there that the just is identical with the legal. Justice consists in obedience to the laws of the city, i.e. to laws made by the citizen body assembled. Hippias says that these laws cannot be something very respectable since they are very frequently changed by the very men who voted for them. In other words, his implication is justice is not something very great because it is of such a dubious origin. But eventually he accepts Socrates' assertion that this exactly is virtue. Then Socrates suddenly brings up the question of unwritten laws. Now unwritten laws are, in a way, higher laws but they are not necessarily natural laws. Let us see what this means here. Laws which are held in every land by all men. Hence, they cannot possibly be of human origin since the whole human race never assembled in order to establish any laws. Hippias asserts that these laws would stem from the gods for it is the first law everywhere to worship gods. Socrates says then what about the law of honoring parents. Hippias also agrees. So this is another law of these unwritten laws. Socrates: what about incest between parents and children? Hippias denies this on the ground that men do commit incest and hence it is possible; hence it is natural, whereas he implies men do not fail to worship the gods or to honor their parents. Yet Socrates says people commit other crimes against the laws laid down by the gods and they are punished for that by the gods. What, then, is the punishment for incest between parents and children? Answer: inferior offspring, because generation doesn't take place in these cases while both generators are at their peak. This argument -- that is not said -- implies that incest between brothers and sisters is an entirely different case. Incest between brothers and sisters has a very different status, and if we draw the final conclusion, incest between brothers and sisters is permitted. Have you ever heard this view presented elsewhere in this neighborhood here? No, I mean in this historical neighborhood. Well, that's exactly the teaching of Plato's Republic. In Plato's Republic there is a prohibition against incest between parents and children but not within the same generation.

Socrates further speaks of the law to be grateful, to requite benefits. This is also a law which carries -- the transgression of which carries its punishment with itself. If one does not requite benefits one will be punished by loss of all friends. Hippias thereupon says these look indeed like divine laws because transgression carries with it punishment. The punishment does not have to be inflicted by human beings. The punishment is self-enforcing. This would seem to be some rudimentary notion of a natural law. Yes, I must now turn to Socrates and Plato but it is not practical to begin that now. Let us use the short time we have for discussion.

The main point which I wished to make today was this: that we have sufficient evidence to say that both the assertion of natural right and the denial of natural right occurs prior to Socrates. But the evidence we have is not sufficient to present developed doctrines of this kind. The first developed



doctrines we have are, however, Plato's and Aristotle's. Yes?

Q: Am I correct in supposing that you propose natural right as a subset of natural law? That is to say, natural right is those natural laws which have to do with matters of the good as opposed to matters of the self?

S: Well, what I'm trying to do is something much more simple. First, to give you, I hope, a true and clear presentation of what the most famous teachers of natural right said about it. I mean, what one of you said; there is this very great variety of opinions regarding natural right. I mean, even those who assert some natural right disagree very much among themselves. But first, what precisely is the issue? I mean the mere general remark, they disagree, is not very enlightening. Is there not a very definite issue? I would like to bring this to your attention and that is the primary purpose of this course because what you learn today from the textbooks is simply not only insufficient, but simply misleading: fundamentally, because natural right is not taken seriously, is regarded as a merely historical thing -- you know, a doctrine which was very powerful in the past and which is not properly studied. I mean, occasionally I will engage in some polemics against certain historians. For example, if you take the famous work of Carlyle's, six volumes worth, you get the impression that -- and the same things were done by McIlwain in his book, Growth of Political Thought in the West -- you get the impression that natural right, natural law -- that comes up with the so-called Stoics, i.e. after Aristotle and plays a very great role until John Locke or Tom Paine more or less and no serious change occurs -- fundamentally it's the same tradition -- you know? -- and this is a very wrong statement. What they say reflects the truth in a dim manner. I wish to make this as clear and exact as I can do it in a lecture course. Yes?

Q2: (Inaudible).

S: Yes. Well, can you describe this more fully?

Q2: Well, don't the gods influence nature. . . .

S: Yes, this is this oldest Homeric passage and then we would have to go into an infinite question: what is the status of the gods in Homer, which I can only state as a question and that's all I will say about it. Now if we speak of the philosophers, the situation is somewhat different. We have, of course, the pre-Socratic philosophers where we have fragments and where always difficulties arise. But still, on the basis of your own thinking, how would you say how the situation was? I mean, speaking about gods the first question would be, I take it, what is a god? Would this not be necessary? I mean, for example, Zeus is the father of Hermes, for example. What does this mean? Is he a being who generated with some female god other gods? Do they accept that? I mean, do the philosophers accept that? -- would be a question. Very generally stated, the gods become, of course, a problem on this basis altogether, and the simplest statement which one can make about this is the following one: that on the basis of philosophy there appeared the necessity of proving that there are gods. Prior to philosophy this necessity didn't exist; and in Plato and Aristotle you find such proofs: an ascent from what we see, from the natural phenomena, including man, to gods. But these gods are no longer Zeus or Apollo, although they still speak of them -- I mean, of the Olympian gods. Is this of any help? No, but the other question is this: is there any relation between natural right, natural law, and gods. That is what you mean. We must see.

Q2: . . . there is this connection. . . .

S: Sure. Well, that is a very long question, whether there is any direct connection between Aristotle's unmoved mover and what he says about natural right. That would be a question.

Q<sub>3</sub>: I was wondering about why all of a sudden there was a need to justify nature --

S: Not justify. To discover it! Do you think you would --

Q<sub>3</sub>: (Inaudible).

S: No, that there is such a thing as nature. We wouldn't sit here -- there would be no physics department and what they do without some man or men at some time having become aware of the fact or perhaps the possibility that there is such a thing as nature. I repeat what I said at the beginning: man does not know by nature that there is nature. When you claim you know nature then you know it because you have been told that there is nature. That is all. You hear it already when you are five years old or perhaps earlier today, but this was not so at all times. Our physics, the very word, indicates -- that's derivative from physis -- I mean, you must have had some warning also in other classes that one must not be thoughtless or, as they sometimes put it, that one must be exact. One cannot take these things for granted. Infinite implications are involved in this very notion of nature. Someone has said very rightly that when the Greeks spoke of natural science the emphasis was absolutely on nature: the science which reveals nature. Today when people speak of natural science the emphasis is entirely on science, and so much so that when people speak today of science it means natural science. So much has it become a matter of course. So much has this great promise of all western thought become overlaid by much later and much more ephemeral developments. Now no one can be forced, of course -- this is a free country -- to think about these matters, but I believe it's the duty of people like myself and others to make clear that if one does not think about them one simply speaks constantly not only without understanding what one is talking about, but without having an inkling that there should be a difficulty of finding out what one is talking about. Yes?

Q<sub>4</sub>: The distinction between nature and nomos is much the same as the distinction between reality and appearance.

S: No, reality is not a Greek word. So, I mean, that arises under entirely different circumstances: . . . but if you say truth and appearance it would be somewhat different. No, but are not chairs as truly as dogs? And are not, in a way, the nomoi -- which is the plural of nomos -- as truly as dogs? No; surely not the same as the distinction. I mean, if you want to have a modern equivalent which is never quite correct but which can be helpful I would say nomos in the philosophic sense of the term is something like what now is called a weltanschauung or what might now be called an authoritative opinion: that to which a society is dedicated without examining it and without, as a society -- being unable, as a society, being unable to examine it. And such things exist everywhere. It is one of the empirical assertions of our present day social science, at least of a part of it, that a society does not have to be dedicated to something. Yes? -- does not have to be dedicated to something. I mean, some people, of course, of social scientists say there are always values, but this is a very dubious interpretation of what -- I mean, a very dubious and questionable interpretation of what kind of things -- to what kind of things a society is dedicated. But every society, I think we will find if we look

around, that it is dedicated to something; that it regards something as worth looking up to, worth looking up to. If you take this most simple understanding of our present society such things as freedom and equality are such things. Things everywhere people are at least presumed to look up to and the modern social scientist says he, as a social scientist, does not look up to anything, whereas the former philosophers said also the philosophers must look up to something as philosophers which is not necessarily the same as what that society looks up to. That is, in a way, the question of nature. What is that which is by nature of such a character that man must look up to it? Nature as merely material for human uses and nothing else is a very special interpretation of nature which in this form emerged in modern times. In pre-modern times and to some extent even now -- up to now the view is that nature gives us also directives and is not merely material. And especially human nature. I mean the whole modern process came underway on the basis of the assumption that there are natural purposes of man and that these natural purposes of man require for their best fulfillment a new kind of study of nature: the modern natural science. And then from a certain moment on, and this is of course practically important up to the present day -- I mean, all utilitarianism still is based fundamentally on this view whether it admits this or not. When people speak of the underdeveloped nations today and what should be done to them: a decent standard of living regarding health, food, housing, and so -- there is still a notion of what is by nature good for man as man, varying according to climate and other things -- that goes without saying -- but fundamentally the standards were there. And only in the last fifty years has this notion become rejected and therefore there is no longer a clear answer possible -- what is the meaning of science? That is of what I spoke at the beginning of this course. Yes?

Q5: (Question as to whether the concept of nature is or is not necessarily dependent upon God).

S: Yes, well that is very difficult. I mean, I have to take up this question by all means. Well, there is a famous statement, you know, in the seventeenth century by Grotius. Some people say that's the beginning of the modern development, which I believe is not true. Grotius says there would be natural law even if there were no God. Have you never heard that? The quotation is very famous. Yes, but the question is -- that is a long question -- what does God mean for a thinker like Aristotle or Plato? That is a great question and therefore one must see, must study that. Mr. Butterworth.

Q6: I have trouble in following the reconciliation that you made between these two statements of Heraclitus. In one he says that for god all things are just and beautiful and good and the other one where he says that the law, nomos, comes down from one divine law. There seems to be a tension and I don't understand just how --

S: Yes. There is no evidence. The only glimmer of an example is the reference to the distinction between free men and slaves in this fragment which you read. It seems that the distinction between free men and slaves has an entirely different status than the distinction between gods and men, whatever gods may have meant for Heraclitus, and I would say it has also an entirely different status than the distinction, say, between men and dogs, meaning here slavery is a human institution by virtue of which prisoners of war are made slaves. In this sense war is the cause of the difference between free men and slaves. But this human war which establishes the man-made distinction between free men and slaves is only a kind of image of the whole in which something which can be



called war -- say, antagonisms; say, conflict of opposites -- brings about every thing which is brought about by nature. So that insofar as this cosmic process -- let me use this word, the cosmic process -- brings about man it is indirectly the cause of the distinction between right and wrong as a human distinction. Man as man is not thinkable without that distinction. He originates that distinction. That I think he means. But this originating the distinction is not entirely arbitrary and therefore its being not entirely arbitrary points to some higher principle: what he calls the divine law, which is obviously not a moral law. This much is perfectly clear, because for god, he says, there is no distinction. Everything is just. So next time I will turn to Plato -- to Plato's doctrine of natural right.

... let us limit myself to this restatement of the classical view, and not only of men like Plato and Aristotle but also of their opponents as well. And it takes on significance only if you contrast it with an alternative. The alternative would be that the things which are not always are more truly than the things which are always, i.e. that the highest things may be only momentary, ephemeral or rarely. Now if you take a view, for example, like a certain kind of modern materialism, which would say what is always is moved matter, but man is only for a very short time, a few billion years, and the highest possibilities of men are achieved only in the lifetimes of very few human beings. That would be the opposite. Yes? This I wanted to make clear. Now the difficulty which you have is this. I mentioned also that there is a fundamental premise that no being emerges without a cause. That is indeed -- was always presupposed, and the great difficulty in modern thought is due to what happened to the so-called principle of causality. You know? And the question is whether the present day substitute for that, that the principle of causality is a mere assumption or something of this kind, is good enough -- whether this does not endanger the very notion of science. The assumption the cause of a being is another being you said. Well, but when a being emerges which was not before can that being which emerges have produced itself?

O: Are you thinking of the emergence of man and then some form of being that exists --

S: No, but in general, if any being emerges can that emerging being be the cause of its own emergence? That is the question, and you seem to say that or to regard it as possible. Now there were some men who spoke of a causa sui, of a cause of itself, especially Spinoza and to some extent also Descartes, but the question is whether they meant it that way which you mean it. When Spinoza speaks of one substance, that it is the cause of itself, it means that no cause outside of it can be appealed to. He doesn't mean that it brings itself into being, because it is meant to be always. Yes, this is all I can say at this time. The fundamental question which is implied and which is in no way settled by what I said in class or in that book is the fundamental question of causality and that is, indeed, in my opinion the basic issue of philosophy altogether, and it has become that basic issue at least since the time of Hume but the solutions which are offered today by virtue of positivism in particular are no solutions.

Now I turn to the other question, which is much more extensive, by Mr. Vernoff, which was given to me. This is four and a half pages -- no, three and a half pages, single spaced, and it is too long to discuss every point. So I can only bring up the main point. It was very good -- interesting for me to read that because it shows how very difficult it is to make oneself understood. I mean, I say this without any criticism because -- without any bad intent, of course. But I must say you have not understood the meaning of my whole argument and since I'm sure you were not the only one I'm grateful to you that you give me an opportunity to make this clear. I read the beginning. "It is suggested that as human beings everyone has in common at least the biological givens of the species, the heavens above, and the earth under his feet. That is, in virtue of our common astronomical, geological and biological heritage, we might expect to discover some fixed norm, some universe of discourse we can share with all other men upon which our common immutable conditions of being bestows true ultimacy. From this ultimate norm, then, we might derive the

natural, i.e. inherent in our nature, right of mankind. How are we to construe these assertions?" And so on. Now, as I say, of course I never made any suggestions of this kind. Science cannot be the basis of ethics. More precisely, modern science cannot be the basis of ethics. That I never question for any moment. And any argument based on that is, of course -- doesn't meet the issue. But the question which I raised is: is science, by which we then always mean modern science, the way to truth? Our science makes specific premises which in application to man are quite visible: the understanding of the higher in terms of the lower. Think of "evolution": the human kind, the human species, has an origin. It originates in lower things: apes and so on and so on and so on. The human species is understood in the light of its antecedents. The question: is the human nature properly understood if it is understood in the light of its antecedents? That's one way of putting it. My argument, as I presented it, presupposes the questioning of modern science as a whole; not of this or that particular result, but of its ultimate validity. And I tried to show that there is a way leading from the acceptance of modern science as the way to the truth to radical historicism. From the point of view of radical historicism modern science is one manner of understanding the whole, not intrinsically superior to any other, and on the basis of radical historicism the question arises: is there no genuine common ground for all men as men? On the basis of this whole question that common ground cannot be sought in science until one establishes that modern science is the perfection of the human understanding. But this is an open question -- this part of the argument. Now the questionable character of science can be shown very simply as follows, and I believe in doing so I do not deviate from what Mr. Vernoff has in mind. Modern science stands and falls by the exclusion of miracles. For example, when a question like the age of the world or the origin of man or any other question is raised it must have a natural origin. Now if we knew that miracles are impossible this exclusion would be categorical, i.e. not hypothetical. But our science can never say that miracles are impossible. It can only say that science has no way of knowing them. So if miracles are not impossible the exclusion of miracles can only be hypothetical, and therewith also everything said about the origin of man and so on and so on. But even if we grant that everything modern science teaches regarding heaven and earth, the human digestion, and what not, this would still permit us to wonder whether what it teaches about the specifically human is adequate: whether it is equally competent regarding the human in man as it is regarding inanimate bodies, for example, and also, say, human digestion. I indicated this in the following way. Granted that modern science is much more competent than common sense is regarding things where telescopic or microscopic knowledge is superior to macroscopic knowledge, and obviously regarding the heavenly things the telescope is better than the unarmed eye; the same applies also to things regarding microscopic knowledge. But regarding man and human conduct and this kind of thing it is by no means evident that the macroscopic knowledge we acquire in life of men and human conduct should be inferior to any specifically scientific knowledge.

I would like to make one or two more remarks about Mr. Vernoff's paper. I cannot enter in every point. He says then, "Applying this to the supra-individual of the cultural organism. . . ." That's only one example among many. But who spoke of cultural organisms? How do we know that there are cultural organisms? That this is a thing today admitted and used by sociology and other parts of social science is, of course, not a sufficient justification. We must go much deeper and see how these things now called cultural organism would have to be called properly. All kinds of premises are involved which we cannot accept without examination. In other words, the argument of Mr. Vernoff is based on the simple acceptance of concepts and theories now generally accepted. And



this is, of course, in a way very practical and very convenient, but it is not adequate enough when we are confronted with the question, whether our now prevailing scientific orientation is as such adequate. Let me see. Now also here this point: "The question which we would have to discuss beyond all these preliminary questions, what is the meaning of life?" Yes, but I would raise the question, is this truly a primary question? Does this question of the meaning of life in these terms not arise under very specific circumstances. When did people begin to speak of the meaning of life? As far as I can see without having made any special study, some time in the nineteenth century. Formerly people raised a different question: what is good? That's not exactly the same question as what's the meaning of life. It's a much more natural question. When the prophet Micah says, "The Lord has told you what is good" and so on, it's an answer to what is good. That was also the question for Plato and Aristotle. That's a more primary, more elementary, more natural form of the question. Then you turn then over to the question of the Bible and especially the Hebrew Bible and you say for the Hebrew the question of God simply does not arise. "God simply is. The Hebrew who is a true son of his tribe can interpret this question only one way: by pointing at the condition of his existence." Now in a way you protected yourself by saying "the true son of his tribe," meaning, if he is a pious Jew. But you cannot -- not all Hebrews, even in Biblical times, were pious. There is a song which begins, "The fool hath said in his heart there is no God." So obviously there must have been Hebrews who were not in this sense -- so that it is not true to say that no one could possibly imagine. That is simply not correct. "What Descartes must needs approach through the devious roots of Hellenically informed reason" -- I suppose you mean the existence of God -- "was to the Hebrew the bread and butter of everyday life." Well read the Old Testament and see -- read the stories of the almost constant backslidings where other gods -- you know -- Baal and they were called -- were recognized. That is not as simple as that.

Then you raise this question. "When we speak of human nature we mean, of course, this particular species which we know living on earth" -- and what about -- maybe there are thinking beings on other planets. Surely who can exclude that without having been there? But this was always considered. There is a very nice short novel of Voltaire, *Micomegas* (?), where he discusses this possibility in a very interesting manner. This is, of course, in no way excluded. But we don't -- since we know man only -- thinking beings only as earthly beings we have to start from that in any attempt to understand it. The conclusion which you arrive at and which is perfectly defensible: "the moral question," you say, "I'm afraid" -- I do not know why you are afraid -- "shades impossibly (?) into the theological question." That can be defended, but if I understand you correctly you mean the only way to the really humanly important truth is divine revelation. That has been said frequently by very great men, but of course one can also not accept this without wondering whether there is not something which we can know about man and his good by reason, by unassisted human reason. When Augustine spoke of the virtues of the pagans as splendid vices he still did not deny that the conduct of Scipio or other great Romans was and deserved to be praised more highly than the conduct of a traitor or a corrupt individual. So even if it were theologically true that all natural virtues, all virtues arrived at by human means, are questionable in the last analysis, they are nevertheless of great importance for many practical purposes and one cannot simply reject this prior to examination.

So what -- now how shall I make now the transition to what I am dealing with now? In order to make it easier take, if you wish, what I'm going to say

as a simple exposition of what the greatest men of the past have taught of natural right. Now if you see difficulties, if you have the impression that they make assumptions which are dubious by all means make this clear to yourself and if it's practicable even to the class and we will do that. Surely. But I said this before: in most present day discussions of natural right the simple factual knowledge required is much too small. People who have some way recollections of the Declaration of Independence and some sentences in Locke perhaps believe they understand what the issue is. That is not true. I would like to present the full issue within the limits of such a relatively short course.

Now last time I began to say that there cannot be any assertion of natural right if men are not aware of nature. Of something like right people are always aware, but not of nature. And this discovery of nature took place in Greece. Now what did nature mean in this original stage, which original stage includes Plato and Aristotle. Nature was understood in contra-distinction to art and, above all, to nomos; nomos, which means law, custom, convention, authoritative opinion: you have your choice. Nature means primarily something like growth and therefore also the term -- and especially the term of the growth: the quality a thing has when it has reached the term of its growth. Now regarding nomos one can say convention but one must understand it properly. That is by convention which is only by virtue of men's agreeing on it. For example, currency: dollars vs. pounds, or that pieces of paper have a value that you can buy something. This is, of course, possible only by virtue of some agreement among human beings. Weights, measures, words -- why do we call this animal dog and not hund or or whatever word we take? -- that is not in the nature of things, but this is due to something like agreement. That was, at least, the Greek view of it.

On the basis of the distinction the question arose, is there something right by nature or is all right due to human convention? Now, for example, right or left driving is obviously right only by virtue of convention or human legislation, but is this true of all right? Does it have no different status? Is it as arbitrary as whether you settle in favor of right or left driving? Now the view which asserts that all right is conventional I shall call conventionalism and this was surely a very powerful school throughout the ages. And conventionalism asserts, then, that when we analyze any notion of right we arrive eventually at a mere fiat of the legislator, of society; however you call it. In other words, that all right, however high and sacred, ultimately has no higher status than driving left or driving right. Conventionalism is akin to but not identical with the relativism, so-called, now prevailing in the social sciences because conventionalism asserts and takes for granted that there are things which are by nature good. For example, health, strength, and some other things. But they say while there are things which are by nature good there are none which are by nature right, whereas social science relativism says there are also no things which are by nature good, as we have heard last time some of you say.

It is also necessary for the understanding of conventionalism to consider another modern view which is practically indistinguishable from social science positivism, but which is in its thesis distinguishable, and that is what they call naturalism. Naturalism asserts that everything that is or happens is natural, whereas conventionalism asserts no, not everything that is or happens is natural. Some things are merely conventional. Let us try to understand that. Now the present day naturalist would perhaps argue as follows. Is not every notion of right or every value system the natural product of a given society and hence as natural as an apple, as -- so to speak -- a product of the apple

tree. For example, of the climate, the mode of production, the state of knowledge in that particular society, and so on. This was indeed a quite common view in the not too distant past. Such a work like Montesquieu's Spirit of Laws makes the attempt to show that the various notions of right are all due to natural causes. For example, if you find polygamy in the East and monogamy in the West, Montesquieu tried to show how this is connected with the climate and so on of these particular societies. But this is no longer the prevalent view in our social sciences. I have referred before to Ruth Benedict's Patterns of Culture, a book which I haven't read for twelve years so if I make a mistake you will tell me. She took the case of these two Northern American Indian tribes where the climate and everything else, the race and all this, were exactly the same and yet the value systems of the two tribes were radically different. The value systems could not be traced to any natural cause. In other words, what we arrive at ultimately in analyzing a value system is an irreducible choice, not reducible to any natural conditions. Now this is however not a specialty of Ruth Benedict, and perhaps a special mistake of hers, but it is fundamentally underlying social science relativism, as I believe one can show in this manner. Let us assume that any value system, alpha, is fully conditioned by social characteristics "A" or for that matter, more seriously, if any ought you find anywhere is the necessary outcome of an is, "A", then the whole situation as we know it in the social sciences wouldn't exist. The assumption underlying present day positivism is that any "A," any state of an individual or of a society, is compatible with a great variety of values: alpha, beta, gamma, and so on, and therefore there is something like an irreducible, inexplicable choice. This is fundamentally the same -- what the Greeks meant, the Greek conventionalists especially, meant by their view. Only this is no longer called nomos or convention, but the term which would now be used would be something like historical decision, and I think one can say that we do not understand anymore the Greek notion of nomos because its place has been taken by History with a capital "H."

Now I explained last time that at the very beginning of Greek philosophy prior to Socrates both views, the view that there is nothing which is by nature right and the view that there are things which are by nature right, were developed. But it is of no use to dwell about it because we know so little about it. We have to depend on fragments. There is one fragment to which I referred, a conventionalist fragment, which might be of interest to you because it, in many ways, sounds to be very modern; and that is a remark of the Sophist Antiphon which I will find out from Mr. Butterworth and he will be so good to read it slowly to the class -- if you come here and permit me only to find it in the text to make the indispensable corrections. This has been discovered only about three decades ago from papyrae. It is very fragmentary and contains quite a few illegibilities, but still something emerges, and let us read that.

O: "Justice, then, is not to transgress that which is the law of the city in which one is a citizen. A man, therefore, can best conduct himself in harmony with justice if, when in the company of witnesses, he upholds the laws, and when alone without witnesses he upholds the edicts of nature."

S: Yes, this is, of course, not a correct translation, the last point: "If he upholds that which stems from nature." In other words, edicts of nature is not a correct translation, a wholly unnecessary translation. But do you get it? Justice means legality and legality means to obey the laws of the city. If someone would transgress the laws of the city he would be extremely foolish because jail, gallows, and other unpleasantnesses would follow. But if he is alone, i.e. if there are no witnesses, he will very well transgres-



sion and should do what nature prompts him to do. Yes?

O: "For the edicts of the laws are imposed artificially, but those of nature are compulsory."

S: Again edicts is not necessary. "The things of nature are necessary." Yes. Now what does that mean? Go on.

O: "And the edicts of the laws are arrived at by consent, not by natural rule, whereas those of nature are not a matter of consent."

S: So, in other words, whatever the law forbids, say not to steal or any other things, is merely a matter of agreement among the citizens in one way or the other, whereas the things which nature prompts us to do are not based on any human agreement but are necessary, as he puts it. The question is how can one, nevertheless, act against that -- what is necessary -- that has to be explained. Yes?

O: "So if a man transgresses the legal code he evades those who have agreed to these edicts, he avoids both disgrace and penalty; otherwise not. But if a man violates against possibility any of the laws which are implanted in nature--"

S: Yes, this is also -- I mean, laws is not here. "The things" -- all right -- "which have grown up together with nature." Yes?

O: "... even if he evades all men's detection the ill is no less, and even if all see it is no greater."

S: In other words, what nature prompts us to do -- if we do not do that we suffer from it whether other people see us or not. The simple example is intoxication for someone who cannot stand it. He will suffer from it whether he has witnesses or not. But if he steals or murders even and there are no witnesses he can get away with it easily. Yes?

O: "For he is not hurt on account of an opinion, but because of truth."

S: You see, the opinion and nomos belong together, and nature and truth belong together. Yes?

O: "The examination of these things is in general for this reason: that the majority of just acts according to law are prescribed contrary to nature, for there is legislation about the eyes, what they must see and what not, and about the ears, what they must hear and what not, and about the tongue, what it must speak and what not."

S: You see, in other words, law is truly comprehensive. I mean, there are laws forbidding to see certain things. We cannot understand it immediately on the basis of our notion of law, but there are some, some unwritten laws even today. Some things you are not supposed to see and surely to speak. Yes?

O: "And about the hands, what they must do and what not, and about the feet, where they must go and where not. Now the law's provisions are in no way more agreeable to nature and more akin than the law's injunctions, but life belongs to nature and death too and life for them is derived from advantages and death from disadvantages."

S: In other words, these are natural goods. That hemlock kills you, this is not a legal enactment. That follows necessarily. But being hung for murder is not a natural consequence. It comes about only by virtue of detection, witnesses and so on. Yes?

O: "And advantages laid down by the laws are chains upon nature, but those laid down by nature are free, so that the things which hurt according to true reason do not benefit nature more than those which delight, and things which grieve are not more advantageous than those which please. For things truly advantageous must not really harm but must benefit. The naturally advantageous things, from among these -- "

S: Yes, there are -- I see -- yes, lacunae. Well, now let us leave it at that. So, of course, Antiphon must show that the things imposed by law, by convention, are harmful, and that he does in the sequel. We cannot read that. It is sufficient for us -- the argument is developed in another way by Glaucon in the second book of the Republic and by Callicles in Plato's Gorgias. I will speak of that later. This in the way of an illustration of the conventionalist view. Unless there is a question regarding this particular point -- let us not now open the whole issue of positivism and historicism because otherwise we will not make any headway. Is there any difficulty regarding the understanding of conventionalism, because it is in some respect indeed akin to what positivism or social science relativism teaches now, but it is also different. If there is any difficulty on that ground I would like to clear it up. Yes?

O: . . . what is just is an attribute of nomos and what is good is an attribute of nature.

S: You can put it this way. There are things which are by nature good. For example, take tuberculosis -- is by nature bad. It ruins the human body. Doesn't it? And this kind of thing. But theft is not by nature bad. Theft is bad only by virtue of human enactment, and as is shown by the fact that this is operative only if enforced by human beings. Things which are by nature good are good without any human intervention. Is this clear to this point? Yes. But to repeat, the characteristic difference between conventionalism and the view now prevailing is that conventionalism admits that there are things which are by nature good.

O: Which modern science does not?

S: Yes, well they would say, as one of you said last time; there are people who deny that health is a good. Yes? Or to go beyond that, you may choose death as your value as well as life. And the conventionalists say that must be a crazy man. By nature he is prompted to live. Well, under certain conditions -- if he lives in very great misery and so on he might prefer death to life, but not naturally, not in the normal case. And you wanted to say something?

O<sub>2</sub>: Well, the conventionalists have to to nomos. That is, do they approve of customs, then?

S: Yes, as in a way inevitable they have to. Sure, but if you can circumvent it, which you can do only secretly -- it is in a way a gangster morality. Yes, sure. Yes, but it can also be understood in a more lofty sense, but the gangster morality is the most simple illustration of it. Circumvent it if you can safely do it. But this notion, this distinction between nature and convention,

has had a very powerful effect throughout the ages; in a concealed way, up to the present day. For example, all the corrections and criticisms of so-called conventional morality, as they still say today; conventional morality. What does that mean? For example, the prohibition against incest, against homosexuality. You know: the whole problem of Kinsey. You know, this has to do with that. All these prohibitions are merely conventional and that is a special form of it which is, of course, of great practical importance. Yes?

Q: It seems to me that the conventionalists are saying that nature is the  
It's always been unhealthy if you go to jail --

S: Yes, yes, sure. Yes, but only indirectly. It doesn't take place by nature. You can avoid it either if you are very clever, or in addition to being very clever you have a first rate lawyer. You know, they all have lawyers, as you must know. Therefore the connection with rhetoric is so important. You know? When Aristotle and Plato suggest no conventionalism without rhetoric -- surely, the rhetoric is the great assistance to make the law ineffective by seemingly legal means. Yes. Good.

Now let us then turn to Socrates because in a sense the whole history of political philosophy proper begins with Socrates. Now what is the peculiarity of Socrates' teaching? Let us first listen to what Aristotle says about Socrates in his *Metaphysics*. Socrates is said to have been concerned only with ethica, with ethical things or, in Latin, moral things. May I mention the fact that there is no distinction between ethics and morals. There is one in present day American usage. You speak of an unethical drug store and immorality seems to be more limited to sexual matters, if I understand the usage correctly. This is a vagary of present day usage. Moral is simply the Latin translation of ethics. Now ethics is derived from the Greek word ethos and ethos means character. I mean, ethics is the doctrine of human characters, which are of necessity either good or bad characters. So Socrates was concerned only with ethical things. Secondly, he raised the question of what is the thing much more and much more radically than anyone else before him; and the third point, the "what" question leads to the definition. For example, what is a dog? The answer would be the definition of the dog. And the third point: in order to arrive at definition Socrates used "induction." Induction does not quite mean the same which it means in time of Bacon. Induction means simply by starting from a given phenomenon to which you can point. In other words, a single example might be sufficient. You do not have to have this kind of checking on which Bacon insisted and which plays such a great role in the present day notion of induction.

Now the remark of Aristotle is made slightly more specific by what Cicero says in the fifth book of his *Tusculan* (?) Disputation: "Socrates was the first man to bring down philosophy from heaven and he placed it in the cities and introduced it in the houses and compelled philosophy to inquire about life and manners and things good and bad." In a word, Socrates was the first philosopher concerned exclusively or chiefly with human things or political things. This is more or less the same. Now Socrates could not have done this without clarity about the essential difference between the human or political things and the things which are not human or political. But one could say, was such a clarity not already implied in the distinction between nature and convention? No. If the human things, good and bad, the right and wrong, the noble and base, are not simply conventional. So the distinction between the human things and the other things is a distinction within the natural things, in the wider



sense of the term; within the non-conventional things. Now Socrates surely asserted that there is an essential difference between political things and things which are not political, and this presupposes that he admitted and emphasized that there are essential differences, essential differences. If I may use now a traditional term not used by Socrates, essential differences obviously presuppose essences. We can say -- we have to qualify that later -- Socrates is the discoverer of essences. Now what does this mean?

Again we have to look at the alternatives. The most simple alternative is to say all things are homogeneous. There are only quantitative differences, differences of more and less, among things. For instance, everything that is is a modification of moved matter. Its being is moved matter, but the moved matter called a dog and the moved matter called a star differ quantitatively, to be expressed in terms of physics and chemistry, for example. This is one alternative. The other alternative is to admit that there is a heterogeneity in things, but a sensual one. The doctrine of four elements where it is understood water is not fire and earth is not air and so on, but these are sensual heterogeneity. The heterogeneity which Socrates asserted is not simply sensual, but let us call it a nouetic heterogeneity in order to avoid the term intellectual. Nouetic is only the Greek word for intellectual. Nouetic heterogeneity. The whole consists of nouetically heterogeneous parts. This is the view asserted for the first time by Socrates and, of course, underlying Plato and Aristotle.

Q: (Asks that last remarks be repeated).

S: The whole consists of nouetically heterogeneous parts. That is the meaning of essentially different parts. Men are essentially different from dogs. Dogs are essentially different from cats, and they from stars and whatever else the beings may be. Socrates sought for that "what" a thing is that came later on to be called the essence, and he sought for it by induction. Induction means here by starting from what is given. Here: that dog here. Frequently a Socratic discussion begins, "Is there such a thing like courage?" And the other fellow says yes. Well, then what is it? But that it is -- it is the given -- is the starting point. This givenness may also mean and shows itself primarily even in what is said about it. It is said about it. Everyone admits that and therefore the Socratic procedure could be called dialectics; dialectics meaning here the ascent from what is said ordinarily to what is true in these assertions. In many Platonic dialogues you find that. They start -- for example, the Republic: justice is this and this; say, to return deposits is justice. And then Socrates shows well, that's not enough. There are obviously other acts which we call just and which are not returning deposits. For example, to abstain from killing, from murdering, is also a just act that's not covered by that. So gradually he ascends and the task is to ascend step by step to the true definition which would tell us exactly and completely what justice is.

Now since our subject is natural right or natural law we will first raise the question, what did Socrates teach regarding natural law? Answer: we do not know for the simple reason that Socrates did not write. But I said a lot of things about Socrates. Now, well, I based those statements on the report of Aristotle and I regard Aristotle, until the contrary is proved, as a reliable reporter; and Aristotle says nothing about Socrates' teaching regarding natural law. Surely, we know something about Socrates from his two greatest pupils, Plato and Xenophon, but there can always arise the question, is this Socrates himself or is this Socrates modified by Plato or Xenophon? Xenophon, to say a

word about that, does not speak of natural law and natural right ever. There is a reference to something of this kind in the dialogue of Socrates and Hippias in Memorabilia IV: iv, which I discussed last time. The only other reference is to a passage in his Education of Cyrus, in the seventh book, chapter five, section 73, where a reference is made to an eternal or sempiternal law among all human beings. This is, however, of no great help because that law is to the effect that the victors take everything belonging to the vanquished. This is, of course, not said by Socrates or another gentle individual, but by the great conqueror, Cyrus, the founder of the Persian empire. So, as I said, we can dismiss that. We must turn to Plato.

Now what is the Platonic teaching, then, about natural law? The term natural law occurs, as far as I know, only twice in all Platonic writings. There is a passage in the Timaeus, 83e, where the speaker, the philosopher Timaeus, speaks of the natural law and this refers to some fluids in the human body. This is not, obviously, what we have in mind. The other reference occurs in the dialogue Gorgias, 483e, where the following phrase occurs: "according to the nature of right and by Zeus, according to the law of nature." That is I think the statement, but this is not said by Socrates but by Callicles and anyone of you who has ever read the Gorgias knows that this cannot mean -- cannot be natural law in the sense we seek it because Callicles' law of nature is the law of the stronger, the same thing of which Cyrus spoke in the passage of Xenophon. Plato's Socrates or any other respectable spokesman of Plato never uses the expression natural law. Plato's Socrates does speak of what is by nature right and this difference is, of course, of some importance. First we will only try to get the most relevant facts. The explanation must follow later.

Now I would like -- since I used this term natural right in the title of a book I indicated by this that I attach some importance to it. A critic made this suggestion: that this was due to my insufficient familiarity with the English tongue. I'm aware of that insufficiency but it doesn't go quite so far; namely, in the continental languages, German, French, Italian, I suppose also Spanish, they speak of natur recht, droit naturel, naturale, and so on, meaning -- which, literally translated into English, would be right, whereas in English people habitually speak of natural law. I know that. All right, but I thought of something else. I thought of the older terminology which is no longer so visible in the English tongue but which is surely easily noticeable in Latin. What is called in Greek dikayon (?), physae dikayon (?), is in Latin translation jus, jus naturale. And what is jus? Not translated by right. What is just. That which is just: this is the terminological (?) meaning. And why people began to speak of rights of man in the eighteenth century. You know, rights of man, natural rights, and as distinguished from natural law. That is a very complicated question. It has nothing whatever to do with the difficulties and complications we find in pre-modern times. So I say there is a Platonic teaching regarding natural right.

Both Plato's Socrates and Plato's spokesman in the Laws, the Athenian Stranger, oppose explicitly the view that right is only conventional, as is asserted by other personages in the Platonic dialogues. Again, a few terminological points which are unfortunately -- you will not even become aware of it if you read translations because these translators are extremely -- well, how shall I say -- irresponsible or kind; namely, in order to avoid, remove, difficulties for the present day reader they translate in present day jargon of some kind. In other words, it's a kind action. But on the other hand it is, of course, irresponsible because you never hear Plato; you hear only what you hear anyway. So the question of natural right is entirely different from the question of the

nature of right or of justice. For example, in Glaucon's speech in the second book of the Republic the phrase occurs "the nature of justice," in the sense of the coming in being and character of justice. Even a conventionalist, of course, speaks of the nature of justice. He says the nature of justice is to be conventional. You know: that is one little difficulty. One can also speak, as Plato does elsewhere, of the natural definition of right. This has no other meaning than the true definition of currency, for example, where it is understood that currency is conventional. On the other hand, when such a phrase occurs like punishment according to nature -- the Greek word for punishment is of the same root as the word for right -- dike -- the punishment according to nature which means to suffer what one has done. For example, if one has committed a crime against property one should be punished in one's property; if one has killed a man one should be killed, and this kind of thing. None of these passages, to which others could be added, speak clearly of natural right. This precise expression is extremely rare in Plato. The classic passage occurs in the Republic, 501, and which is in the sixth book, and I will again ask our reader, Mr. Dutterworth, to read this short passage to us. I remember distinctly that it is in this translation, 501d. Yes, it is here the passage of how the best city is to be erected, established. Begin here; it's not very long, the end of the page -- "he will take the society --".

O: "He will take society and human character as his canvass and begin by scraping it clean. That is no easy matter. But as you know, unlike other reformers, he will not consent to take in hand either an individual or a state or to draft laws until he is given a clean surface to work on or has cleansed it himself."

S: In other words, it will be a beginning, an absolutely new beginning. In our language, a revolution from the ground up. Yes?

O: And the interlocutor says, "Quite likely." "Next he will sketch in the outline of the constitution. Then, as the work goes on, he will frequently refer to his model, the ideas of justice, goodness, temperance, and the rest, and compare with them the copy of these qualities which he is trying to create in human society."

S: Well, let us leave it at that. In other words, he will look in two directions. He will look first at this and then at that and by a proper mixture of the two bring about the right order. Now what are these two things? And here you see what the translators do. He will look at what is by nature right and noble and so on and so on and then also toward that which is among human beings. So you wouldn't find the word natural right in the translation, what is by nature right; the idea of right, I think he says. This is in a way a correct translation. I mean -- but it is also, in a way, very wrong. So this -- what is by nature right: that is one of the few, in a way the only passage in Plato and we have to discuss that. Confound, this translator, is in a way correct, because for Plato what is by nature right is indeed the idea of justice. So whenever Plato speaks of the idea of justice he means what is by nature right, and from this point of view the idea -- natural right occurs in Plato very often, but this term is so extremely rare. And there is evidence -- enough evidence to show that the ideas in contradistinction to everything else are in nature. For example, I refer to you Republic 597b to 598a; that's in the tenth book. But what is an idea? Natural right, the idea of justice, is an idea. What, then, is an idea?

(Change of tape).



... but hard to understand, an idea is a self-subsisting being which is unchangeable in every respect and hence which is always or eternal. That is the least one has to say. An idea is not a concept. It became a concept in post-Platonic thought. In Platonic thought an idea is a self-subsisting being. Let me try to explain it somewhat. You must have heard, if only by reading the daily papers, about missiles, of something called Nike, or as I was brought up to pronounce it, Nike. (Long "i" used in first pronunciation, short "i" in second). I will write it here. That is the Greek word for victory. Now what -- victory. There are many victories, you know, in many wars and so on, but victory was also understood by most Greeks to be a goddess and therefore there were also sculptures of her, well known sculptures. And so Nike could, of course, then also mean the statue of Nike. Now there were many many battles and many many statues and yet there is ultimately only one single Nike. Whenever a battle is won, whenever Victory is worshipped because of the victory, men mean always the same being, Nike. She came down at this particular place among this army and gave them victory. So this notion of gods, of a certain kind of gods like Nike was for the Greeks a help in understanding what Plato meant by ideas. There was another goddess called Dike, translated right: a self-subsisting being which is always. But of course, the Platonic ideas are not goddesses or gods. Now what, then, is the Platonic meaning facilitated, as it were, because of the Greek understanding of gods but eventually not dependent on it?

Now it seems that there were two kinds of things which induced Socrates in Plato to speak of that. The first things are mathematical things. When you take a circle, for example, or a triangle, which I draw here, it is of course not a circle. It is only an approximation to a circle. And even if I would use a marvelous machine it still would not be a simple circle because there would not be -- never be a clear curve. It would be much too big for a curve. So the circle which we mean when we speak of the circle strictly, mathematically, is not visible to the senses. The sensual presentations are only of assistance. They point to it. They are imitations of the true circle. So there are, then, things which are not sensible and which are one in contra-distinction to the many imitations by many people on many occasions and which are, in this sense, perfect and unchangeable. And then there is something else where we can all still see that there is such a thing and these are what we still call the virtues.

When Plato or a Platonic character praises Socrates after his death -- at the end of the dialogue called Phaedo he says Socrates was the justest, wisest, and so on, of all men of his generation. He does not say Socrates was simply unqualifiedly just and wise. What does he mean by that? That no man is fully just and so on. All virtue which human beings possess is more or less defective. Virtue itself transcends every embodiment. No society is fully just; no law is fully just, and so on. Just as the true circle is never embodied in any sensibly perceivable thing, as little is virtue ever completely present. It transcends that too. These seem to be the starting points of the Socratic-Platonic thought and this is now enlarged, universalized, in a way which is then really paradoxical, for what is true of the circle and of justice is, according to Plato, true also of such things like a dog. Many dogs, many breeds, two sexes, and so on and so on, and old and young ones: none is, according to Plato, a dog pure and simple -- because this is, let us say, a beagle, a male beagle, and this is a female Irish setter or whatever it may be. It's not a dog pure simple. Dog pure and simple transcends all dogs just as the circle as meant by the mathematicians and justice as meant by all of us transcends any embodiment. And here a certain great paradox arises which does not arise in the case of

mathematical things and in the case of the virtues, because the true dog proves to be a thing which doesn't bark, because barking is obviously some change, nor does it wag its tail nor does it run around, and this is very strange. And the most simple reason why Aristotle opposed Plato was exactly that. Aristotle said that is a true dog who wags his tail and not the one who cannot wag his tail. And this will be always the great recommendation of Aristotle: that he said that. Or another example: the true bed is a bed on which no man can ever rest. That's also highly paradoxical. So I cannot possibly go into the question what Plato meant by that. I state it only as a thing which we must not forget. The idea is primarily in all these cases the what of a thing: dogness, the dogness of a dog.

This distinction between the true dog and the dog is akin to a traditional distinction between essence and existence. The essence of the dog is one thing. The essence, dogness; the existence, that he is. This is not what Plato means. The distinction between essence and existence is a very late distinction, surely long after Plato and Aristotle, whenever it might have arisen, because if we use the terminology of essence and existence we would have to state the Platonic view as follows. The truly existing is the essence. But this I only say in order to avoid certain misunderstandings.

The what of justice, to come now back to our immediate problem, is justice itself without any admixture; justice, pure and simple, to use this wonderful phrase. Pure and simple: that is what Plato means. Pure and simple; not justice qualified in this way, say, Greek justice or something that would -- but justice itself, pure and simple. This is the idea of justice. Now what, then, does Plato teach about that? He devoted to this question a whole dialogue and I suppose the most famous dialogue, the Republic. What, then, is the idea of justice according to the Republic? Now after this somewhat solemn introduction everyone must be surprised and think the mountains bring something -- are lying in -- I do not know how to translate -- and a ridiculous little mouse is being born. Now what is justice according to the Republic? Answer: minding one's own business. It's really an anti-climax; isn't it? But Socrates, however, makes the following point. He says minding one's own business or something of this kind; minding one's business or a certain manner of minding one's business. Now what does he mean by that? I suspect that he means doing one's business well. Now, but still that is very general. What he implies is this: only a being consisting of parts can be just, properly speaking. The parts must do their work well and the parts must be heterogeneous. A being consisting of heterogeneous parts each of which does its work well: that is a just being. So justice, we can also say, is the activity flowing from the good condition or state of something consisting of heterogeneous parts. This would surely lead to the consequence that health would be justice. That is not unacceptable to Plato. Indeed, justice is a certain kind of health; namely, health of the soul. What we call health in the body is, in the case of the soul, justice. That is what Plato means by it. There is also a health of the city. The just soul is the healthy soul and the just city is the healthy city. That is indeed the explicit doctrine of the Republic.

Now of course we speak of justice not only of human beings and cities, but also of just laws, for example, and that is however -- there would be no difficulty because a just law can be understood only relative to the just city and the just soul. This would not create any difficulty.

Now let us first consider the health of the soul. To repeat, the health of the soul is not justice itself. That's the idea. It is only one form of

embodiment of it, but the most important one. The soul, according to Plato in the Republic, has three parts which he calls reason, spiritedness, and desire. Spiritedness, you can say, corresponds also to such things like anger. In other words, one way of explaining the difference -- desire: say, you desire an apple and then there is an obstacle to your getting that and then you get angry whenever you are confronted with an obstacle. And for some reason Plato asserts that this part by which we are angry is higher in rank than that by which we desire. I cannot explain that now. I just state it. At any rate, these three parts have each its way of working well. In other words, there is a virtue belonging of these three parts. The virtue of reason we call wisdom. The virtue belonging to spiritedness we call courage or manliness; and the virtue belonging to desire we call temperance or moderation. This, then, is the structure of the healthy soul, which possesses wisdom, courage, temperance. There remains one large province of human doings and sufferings and these are the relations to other human beings. In other words, the soul may be well constituted in itself and perhaps he does not have the proper relation to others, and therefore there is place for a fourth virtue which we call justice in the narrower sense: relations to other men or to the city. So we can, then, say according to Plato the natural right is a good order of the soul, first, as regards its parts, and second, as regards to other human beings or the political community. And this -- the notion that the virtue is -- of each part is the perfection of that part, the perfect working of that part, is at least indicated in a passage of Plato's Laws, 765e to 766a. Now I think I can read another passage in the Laws, which is also an illustration of part of what I said, and that is in the First book, 631, b to d. Unfortunately I do not have more than one copy and I just -- I'll read it to you and try to correct it a bit.

Goods are of two kinds, human and divine, and the human goods are dependent on the divine, and he who receives the greater acquires also the less or else he is bereft of both. The lesser goods are those of which health ranks first, beauty second; the third is strength in running and all other bodily exercises and the fourth is wealth: no blind wealth, but keen of sight provided that it has wisdom for a companion.

In other words, wealth as wealth is a very dubious good and becomes a good only if the owner is sensible.

And wisdom, in turn, has first place among the goods that are divine, and rational temperance of the soul comes second. From these two, when united with courage, there issues justice as a third and the fourth is courage. Now all these are by nature ranked before the human goods and the law giver also must so rank them.

In other words, there is a natural order of all goods and, in particular, of the higher goods, the virtues, and the human legislator is good or bad to the degree to which he follows this natural order of the virtues in his legislation. And in the first book of the Laws, where this passage occurs, an example is given of a bad legislation, of the Spartan legislation, which put courage, manliness, the virtue of war, at the top, and made all other virtues subservient to the virtue of war. That was against the natural order. The true order would be where the virtues of war are subordinate to the virtues of peace.

So let us summarize then. The doctrine of natural right in the Platonic sense is a doctrine of the natural order of the virtues as the natural perfections of the human soul; and therefore while the term natural right occurs very



rarely in Plato the thought is omnipresent in his teaching. Now there is also a narrower sense of the term right: that which refers particularly to other men or to the city. That is the same consideration. What does it mean to be just in the common sense of the term? In the emphatic sense of the term to be just means to be a good man in every respect: wise, courageous and so on, but what in the common sense where we think of virtue is a social virtue? Now in the first place -- that is developed in the first book of Plato's Republic -- not to harm anybody. Well, for example, what do we call a just man? Someone who doesn't steal and murder and so on and so on. But here difficulties arise. Can one avoid harming others? Let us take an everyday example. There are so and so many fellowships. If you get it you prevent someone else from getting it. You surely harm him in a sense, but what does it mean? You harm, to use a present day slightly obscene expression, you hurt his "ego." That is, of course, not genuine harm. That is a fantastic account. When we speak of not harming anybody we mean not to inflict serious harm on him; and not hurting his vanity. For example, take away a man's life, his health, his property, his wife, his honor. These elementary rules. Justice means to give or to leave everyone what belongs to him. Justice, thus understood, is meant to be good and this creates a difficulty and there is even a difficulty which is even a contradiction and this contradiction gives rise to an ascent from the primary opinion to -- ultimately to the idea of justice, to justice pure and simple. Take the example used by Socrates himself: that what belongs to a man, let it be a knife or a gun and let the owner be a lunatic. Is it just to return that knife or gun to that lunatic? If that were right justice would be bad because this fellow would harm himself and he would harm other men. So we have at least to say to give or leave everyone what belongs to him unless he is mad, an important qualification -- unless he is likely to misuse his property grossly. Then one could say why only grossly? Is this not an arbitrary limitation? And that leads very far.

Let me state the difficulty somewhat differently. When we say to give or leave everyone what belongs to him what do we mean by belongs to him? What belongs to him by law. But the laws may be bad or foolish and so that what belongs to him doesn't do any good to him or others. So we would then have to say to give or leave to everyone what is good for him by nature, and as long as it is good for him by nature. This is a very brief sketch of the argument of Plato's Republic which leads to the conclusion that there must be absolute communism and absolute rule of the wise, and that is an absolutely stringent argument if you consider only these facts which I just mentioned. Justice is good if everyone is assigned what is good for him and for as long as it is good for him. It is not good to leave his property to an irresponsible millionaire playboy who will ruin so and so many other people by his irresponsible actions. But who can say what is good for a man? Who can say what is good for the body? Answer: the physician. Who can say what is good for the soul? Answer: the physician of the soul, i.e. the philosopher. And he, of course, must follow strictly what his art, medicine of the soul, tells him and not merely popular opinions or traditional opinions. He must have absolute power. That's what the Republic teaches. I restate this only in the barest form, but you see, Socrates or Plato in presenting this argument abstracts from quite a few very important points. Surely. But within this abstraction the argument is very clear and this leads then to the classic famous teaching of the Republic. In other words, true justice, more generally stated, is possible only in a just city. Now this, I think, is more easily intelligible. A just man is a man who, among other things, obeys the laws, and that's the first thing. I mean, the unjust man is the man who is lawless or disregards the laws secretly or even openly. A just man is a law abiding man. But if the laws are unjust in the first place or very

imperfectly just then all his desire and resolve to be just remains, in a way, empty. The justice is, so to say, in his heart but it cannot become actual in his actions because the actions are guided by a possibly unjust law. Justice in the full sense, in intention as well as in action, is possible only if the laws are just. But the laws will not be just, except accidentally, unless the legislators are just; the law givers, and hence only in a society where the law giver, the sovereign, is just can the requirement of justice be fulfilled.

The Republic has prima facie the task to show this: how does a just city look like, a just city being a city where one can practice justice in the full sense and not a more or less imperfect justice as one can practice, of course, in any society. Yet, as Socrates indicates in 427d, even the just city described in the Republic contains injustice. It deviates from natural right. Why is this the case? In the first place, the perfect city as in the Republic is based on what one may call, and what is as a matter of fact called there, the noble lie. Now what does this mean? The key point as far as it is relevant for us here now is this: the noble lie consists in the fact that we regard only our fellow citizens as brothers. The secret of the noble lie, so to speak, as presented in the Republic, 414, is this: that first all men are presented as brothers, children of the same mother earth, and where the term earth is replaced two lines later by the term , territory -- the territory of this or that city -- and parallel to it the human race is replaced by a segment of the human race, this particular society which forms a political society. Fraternity is limited only to fellow citizens and this is a deviation from nature and therefore this is an element of fundamental untruth without which, however, according to Socrates, human life is impossible because human life requires political societies; it requires cities.

Another point which is also not altogether irrelevant: according to the teaching of the Republic it is necessary that everyone be assigned a job best for him, i.e. for which he is best fitted by nature, and therefore also best for society. That would be a just society; in other words, in which no one who is not a musician is allowed to ruin and annoy other people's ears by the savage things he does, and the same applies also to tailors, bricklayers or whatever it may be. Good. Now this assignment of the individuals to the various jobs cannot possibly be exact because it is meant to be made, as it were, in the cradle or at least at a very early age where it is impossible to say with any definiteness where he belongs. For example, the highest craft is, of course, philosophy and how can you possibly say with certainty of a 5-year-old child that he is fit to be a philosopher and not, let me say, a clerk in a company's office. So the city necessarily suffers from injustices, but even this not altogether just city, although it is the justest city imaginable, is not possible, as becomes gradually clear as the argument of the Republic proceeds. Therefore, what is the conclusion? The conclusion is that we have to redefine the justice or the right possible as a right which necessarily deviates from what is intrinsically right. I will this develop more fully next time. I will only state this point.

It is impossible for men to live together without -- as we say, without some freedom, i.e. without every man in one way or the other having a say regarding the laws of his society. Regardless of whether this individual is intelligent or unintelligent, public spirited or a very narrow egoist, that's necessary. This means however that wisdom, pure wisdom, cannot rule, because pure wisdom would in effect mean rule of tyrants pretending to be wise. We would never get the true rule of wise men and I think the experience in our century written large on every page of the newspapers amply confirms it. So

the maximum we can have is a mixture of wisdom, because we must hope that at some place in this great legislative machinery wisdom will be heard at one point or the other. So wisdom is indispensable, but there must also be consent. Consent however means in this connection consent by unwise people. Now if we state it now in these terms, that wisdom as wisdom is directed toward what is by nature right the unwise as unwise will not understand what is by nature right. That is surely the Platonic way of looking at it and therefore the only right which we can have is a natural right in many ways diluted by principles of unwisdom, and that is the reason why Plato speaks so rarely of natural right although he has clearly delineated a doctrine of natural right proper. To summarize this point, the Platonic doctrine of natural right is identical in the first place with his doctrine of the best polis, the best regime, as the absolute rule of wise over unwise people, as this which would be intrinsically the justest thing although not obtainable in practice; but above all the Platonic doctrine of natural right is his doctrine of the virtues and the natural order of the virtues. I will leave it at that and let us have a brief discussion to clarify some points. I mean, what I do not even dream of doing is to give here an interpretation of the Republic. That goes without saying. I limit myself to that small segment which is indispensable when one speaks of natural right. Yes?

Q: Can it be said for Plato that there are several cities which are good, but at the same time there are such radical differences in the cities?

S: In secondary matters yes. Not in essential matters. No. In other words, there could be differences regarding -- one could be in Greece, another could be in a barbaric country, and this kind of thing. It could be. But not in essential matters. No. Well, in a loose sense of the word good. Yes? That is of course -- but not in a strict sense. Yes. The good is one and evil is infinitely many. That is the Platonic thought. Yes?

Q2: Before you said that Plato believed that no man could really embody perfect justice and if this is so, how is this state to go on with these perfectly wise men ruling, these philosopher kings, if there is a possibility because of their very nature that they will be unjust?

S: Yes, that is a very good point, and as a matter of fact it is made in the Republic itself. Let me try to state it as simply as possible. When this key proposition of the Republic is made, roughly in the very center of the book -- evil will not cease from the cities nor from the human race if the philosophers are not kings or the kings are not philosophers -- that's the key passage. This is however repeated at the end of the ninth book in the following manner -- or is it the end of the seventh book? -- well, it doesn't make any difference because both passages are very relevant to this question. I think it's the end of the seventh book. And then he says evils will not cease from the city if, when the philosophers have become kings they will not expel everyone older than 10 from the city and then they will bring up the new generation completely from scratch. So this is of course -- if you think that through you see immediately that this is not possible, a possible thing. No people will accept salvation at that price. They might be willing to accept salvation from the hand of philosophers but not at the price of their being driven into the fields and be separated from the children. Now but the main point is this: the implication of this passage, evils will not cease and the whole passage which I cannot now quote from memory, is it is possible to abolish evil on earth, and this is clearly denied in the Platonic dialogues, especially in the Theatetus and also in the Laws. Every earthly being and therefore, in particular, man is necessarily



exposed to evil and this, in one way or the other, is bound to affect also his virtue. So, in other words, your question is perfectly legitimate. What is the conclusion? The conclusion is only this: taken by itself it would only reinforce Plato's doctrine of ideas, that justice pure and simple will never be found in any city, in any human being, in any law. It will always be an imperfect justice. But it makes all the difference in the world how imperfect, and there is perhaps a kind of a minimum imperfection and that is what we call a perfectly just man. Yes?

Q<sub>3</sub>: Mr. Strauss, on this idea that true justice is possible only in a just city, and the just man -- they obey the laws and if the laws aren't just it would be impossible to be a just man --

S: Fully just. I mean, for all practical purposes we would say a law abiding man is just, but then there come the interesting cases. For example, the case of, say the famous case of people subject to tyrannical government: how law abiding can they be without ceasing to be just? You know that? And we don't even have to go to Nazi Germany and Soviet Russia. It suffices to remain within the pages of Plato where we have the case of Socrates. Socrates was law abiding. It's emphasized time and again. But yet, would he have been willing to be law abiding under all circumstances? Answer: no, because when he discusses this question in the Apology and he says if you Athenians would now make a law forbidding me to philosophize and say we let you out now and don't inflict any punishment on you provided you promise to abide by that law, would you do it? No. He would transgress the law forbidding philosophizing. So there are limits to law abidingness for every human being. They may lie in different places. And therefore justice cannot be identified simply with law abidingness.

Q<sub>3</sub>: Yes, well I was thinking of the interpretation given in "Judgment at Nuremberg" that a judge as the guardian of laws and therefore one who would allow laws to become corrupt must be held responsible. My question is: is this something -- it was obviously positive law in the Nuremberg trial, but on this point with the judge can we say that a higher law than a positive law, in a natural law court (?) this is a correct statement and therefore the judge may be held responsible? For if not, it seems to me that justice must conclude with some sort of deals. If the judges of such a society are not responsible, who is? And if no one's responsible --

S: Yes, that is a very great question, but it is, of course -- I mean, it is a very great question but it is not the primary question. The primary question: is there a natural right? Because if there is no natural right how can we appeal to it? I mean, you cannot appeal to a mere ideal and say that is my value. I mean, every judge who would do that is a criminal man, of course. He is not put there to enforce his values. So if it is not something, as they say, objective then he has no right to appeal to it. And that is the first question: is there a natural right? And then he can appeal to it. And that is always a difficult question, but you know -- I don't know whether you know the case of my friend and a friend of some others, Anastaplo -- you know -- and he defended this position, and which implies a right of resistance to government, a principle of right to revolution, and this was not recognized by most legal authorities in this country, although -- in spite of the Declaration of Independence. This, however, requires a long argument because what people tried to do in modern times was to establish a legal order which would make it superfluous ever to appeal to a higher law. If the legal order is fundamentally decent, if this is sure, if you can make certain of that, then one can rightly

say you have no right to appeal to a higher law. More technically precise, if natural right is the constitutive principle of the whole political order then you cannot appeal from the political order and its organs, including judges, to the natural right. That was surely the intention of men like Locke and Rousseau. Whether this is feasible is also a long question. I have to speak of that later, but this doesn't come up in this stage of the argument. Yes?

Q<sub>4</sub>: Does Plato state that consent is necessary? Is this a practical thing or is it stated in some other way?

S: Yes, it's a practical thing. But you see, when we speak about right we always speak about a practical thing. Do you see? When we speak of right we mean something which men are supposed to do and that's practical. I will take this up next time and perhaps you can read in the meantime for yourself two passages in the Laws which I have to mention next time: 690, a to c, and 757a' to 758a. These are two key passages and I will discuss them. In other words, I will explain later what is the rationale for the qualification of wisdom by consent. Consent always means for Plato, regardless of whether he uses the term or not, consent by the unwise. If you do not take this into consideration you do not see the problem. You see, consent of the wise, that is wisdom. Also when we speak of freedom, of freedom so loosely as we do it most of the time, we do not consider what this means: a freedom for people who are not very virtuous. Shall I give you an example? I mean, those things are all in our tradition in the great books, but they are not ordinarily read. I believe they are not even ordinarily read in all law schools and all political science courses. One of the most famous modern philosophers was, as you surely have heard, Immanuel Kant. Kant taught that lying is sinful, morally bad, under all conditions and he took this -- he stated this more emphatically than any philosopher as philosopher, as distinguished from theologians, did; so much so that you are not even entitled to lie to a potential murderer about the whereabouts of his victim. He wants to kill "x" and he asks you where is "x"? And, I mean, ordinary simple people would say, well, of course I won't tell him the truth because if he sees him he will surely shoot him down. You may not do that. It's a lie. You may, of course, say I refuse to answer. Strictly speaking, you cannot say I don't know because -- if you know. Yes? Good. So Kant was extremely strict, but when he speaks of the natural freedom of man -- he says there is only one natural right, the right to freedom. And this right to freedom includes the freedom to speak, and the freedom to speak includes the right to lie. And Kant doesn't elaborate that but the reasoning is very clear, because if the freedom of speech does not include the right to lie then you admit the legal necessity of censorship in every respect. I mean, Kant doesn't exclude the limited cases: that you may not be able to lie -- you, rather, have no right to lie when you are under oath, and this kind of thing. That is a special case. But the freedom of speech, as is taken for granted in modern liberal society, includes as a matter of course -- that is not even stated -- the freedom to lie. How could there be electoral campaigns, may I ask, without this freedom to lie; because if we are a bit serious we know that if you do not technically lie there are all kinds of -- doing it by circuitous manners which morally are the same as lying. So the freedom -- all these freedoms as they came to be recognized in modern society are very wide freedoms which give rights also to immoral practices. That is from the very beginning and that has nothing to do with particular looseness of some individuals. I mean, this is an entirely -- other matter. But I will speak of that later, of the great change which natural right underwent in modern times which permitted this re-definition. Now did I answer, by this long remark, the question which was

addressed to me? Who was it? Mr. Boyan -- what was your question?

Q<sub>1</sub>: Did Plato's statement that consent is necessary . . . practical. The implication of my question was is this a good thing in any sense?

S: Plato would say an absolutely necessary thing. A necessary thing is not necessarily a good thing. But an indispensable thing. You cannot have a society, except under wholly -- practically impossible circumstances, in which wise men like fathers of the people who are in the same relation to the ruled as fathers would be -- wise fathers -- to little children. I mean, some people believed that kings can be such fathers of the country, but this is not very convincing. I mean, there may have been good kings and surely were but they were not necessarily -- that was the long argument, for example, of Locke against Filmer. You know, that a king is not the father. Simply, these are not his children which he generated. This bond which unites children to their father and vice versa cannot possibly exist between the king even if he is an August -- what was his name -- Augustus the Strong of Saxony who had, I believe, a thousand illegitimate children. But this only confirms that you have that. Good. Yes? So then we will meet next Monday and will -- yes.



... stated in a way in which I seem to have stated it on page 11, following, of Natural Right and History. This refers to my remark, "Philosophizing means ... to ascend from public dogma to essentially private knowledge." (Transcriber's note: page 12 of N.R. & H.) But the conclusion, I believe, does not follow. Is not all knowledge essentially private although it may become public, but it is not essentially public, whereas public dogma, what holds a society as a society together, is necessarily public. Furthermore, the same critic says natural law must be within the definitely possible grasp of all human beings. Yes, but that is surely not the Platonic understanding. It is possible that my concept of natural right is that of a Platonic idea. Well, let us disregard my concept, but the Platonic concept of natural right is surely that of a Platonic idea. Now according to Plato all ideas are, in a way, effective in every human being. As is put in the myth of the Phaedrus, every human soul has seen the ideas prior to being born within a body. That's a mythical expression, but the non-mythical meaning is to be a human being means to have an understanding and to have an understanding means to have some grasp of the ideas. But that doesn't mean, of course, that all men have a sufficient grasp. In other words, practically speaking there is no human being who does not have some notion of right and this notion of right is a part of the full notion of right, but many people have no more than a very fragmentary notion and whether they are able to ascend from the very fragmentary notion to the full notion is a long question, a question which is by Plato surely denied.

This remark, furthermore -- "if you are trying to combine Plato's concept of philosophy with Aristotle's concept of right the two will not mesh. Plato and Aristotle locate nature or essence in very different ways." Yes, I'm aware of that and I will take up this question in the more specific form, what is Plato's doctrine of natural right? What is Aristotle's doctrine of natural right? And I propose that we postpone discussions until I have made this point clear. Now there is a further question, also regarding the Platonic doctrine: "Justice in its ideal form is a compound of the proper balance between wisdom, courage and temperance as these fundamental virtues apply to the social aspect of man's life." Yes, well the idea of justice as Plato understands it, if we take this quite literally, is not identical with the just soul. If I state it quite dogmatically and without even an attempt to understand it but merely text book, so to speak, the idea of justice transcends every being participating in the idea and therefore also in particular the human soul. Schematically, if the idea of justice is somewhere here the just soul is here and the just city is here. These partake or participate in the ideas. They are not themselves the ideas. And therefore it is, of course -- the difficulty is then to say what precisely is the idea of justice in contra-distinction to the just soul, the just city, and I gave an answer to that, a tentative answer. Justice itself, according to Plato, is something like the right order of a whole consisting of heterogeneous parts, and this, of course, would even then apply to the body, it would seem, so that the health of the body would be the participating of the body in justice and therefore justice could also be called the health of the soul.

Now then two specific questions. "To what extent are the social sciences for Plato autonomous and to what extent do they revert to more basic sciences?" Yes, that is hard to answer. Social sciences as we know them today do not exist for Plato and would not, in Plato's point of view, be genuine sciences, if he knew of them. There is fundamentally only one science for Plato, apart from

mathematics and the practical arts, and that is what he calls dialectics or philosophy. And such questions like justice, rule, government, and so, would, of course, be as much part -- subject of dialectics as other things. You know? There is no such distinction possible, except in a provisional manner.

Second question, "Can one talk about natural justice if justice is a compound?" Yes, this next word I cannot read -- "Does this say" -- oh no -- "What does this say about natural right as it applies to the social sphere?" Now the fact that natural justice is a compound is by no means an objection because for Plato most ideas are compounds. Yes? The idea of the soul you can also say is a compound. I think again, let us -- let me finish my account of Plato and then we will take up the questions regarding Plato, and when I'm through with my account of Aristotle we will take up the question as a whole.

Now let me remind you of the context. Natural law or natural right presupposed the notion of nature. Nature is discovered in contra-distinction to art and, above all, to nomos or law. Hence, natural law, natural nomos, nomos as physis, is to begin with a contradiction in terms, the combination of two things which cannot be combined. The question is rather natural right, what is by nature just. Is all right conventional or is there some right which is natural? Both answers were given prior to Socrates, but of the thinkers prior to Socrates, the so-called pre-Socratics, we know only through fragments and through reports. We never got a developed doctrine in their own terms. The clearest and most comprehensive report is that which you find in Plato's Laws, Book X, on page 889. The reports which you have, for example, in Callicles in the Gorgias -- Callicles' doctrine, of which I will speak later -- is naturally not a genuine doctrine of a thinker because Callicles is a very ambitious young Athenian who, as it were, distorts the doctrine to suit his purposes. Similar considerations also apply to the account given by Glaucon in the second book of the Republic. But in Book X of the Laws the speaker, the Athenian Stranger, speaks of the doctrine of philosophers and here you have -- there is no report of this kind available in Aristotle. This is the best we have. Now from this report it appears that prior to Socrates or Plato the conventionalist view prevailed, i.e. the view that all right is conventional, and according to Plato's diagnosis conventionalism prevailed because the prevalent view was that the first things, the most emphatically natural things, are bodies and not soul. The simplest and most convenient example would be the doctrine of atomism. I mention that because this has been effective even in modern times. I mean, if the roots of all beings are atoms and the void then, of course, everything is fundamentally bodily. There is nothing -- soul is something derivative. According to the old atomistic doctrine, by the way, there are soul atoms. That is to say, certain particular atoms are the soul. Soul is body.

Now what does Plato mean by that? I think one can state it as follows. By right we understand somehow a common good, but the body is by nature private and only the body is by nature private. Now what does this mean? The body as body and what belongs to the body and what is bound up with the body cannot be shared. You can sympathize with someone who has a tooth ache, but you cannot share in his tooth ache. The body as body is private. That is, by the way, the key thesis of the Republic, in particular, because the communism suggested there is based on the premise that the only thing which cannot be collectivized or communized is the body. Everything else is communized. The body being essentially private the recognition of body as the only thing natural leads, of course, to a strictly egoistic doctrine of good and bad. Genuine community is possible only in pure thought. For example, we can share feelings, as we know,

but still we can never be certain that we share them identically. But if you, to take the simplest case -- if you study together a demonstration in Euclid -- you share that understanding, if you understand it, if both parts understand it, absolutely. This is in no way affected by the fact that one, two, five, a thousand, a million, individuals understand it. This is the background of the Platonic view and hence, to repeat, there is an essential connection between corporicism, not to use the word materialism, and the denial of natural right in Plato's view. Things are in fact a bit more complicated because the first philosophers who developed a natural law teaching proper, the Stoics, were corporicists. But this I say only to give you a caution. I'll take this up later.

So prior to Socrates it seems that conventionalism prevailed. Socrates is a key figure in the history of natural right and this is connected with his notion of nature. Nature is above all not out of which a thing comes in being -- into being -- or through which -- for example, atoms, elements, or whatever it may be -- but the what, the characters of things or kinds of things. These whats are not reducible to the out of which or the through which. You cannot explain a thing, anything, without knowing first what the thing is. This, I think, is obvious from every point of view. How can you explain, say, the Renaissance in terms of Marxism or of psychoanalysis or any other doctrine if you do not know first what the Renaissance is; because if you do not grasp what it is properly you do not explain the thing to be explained, but a figment of your imagination. So as far as knowledge is concerned every explanation must be preceded by knowledge of the what. But this is, of course, not the whole story. The crucial further point is that this what cannot be identical with the totality of the conditions, the so-called material or efficient causes of the thing. If you have assembled all material or efficient causes of a thing you do not yet have the thing. As it would be put today, when all the conditions are together something new emerges, something which is not contained as such in the material or efficient causes. Simple example:  $H_2O$ . If you have  $H_2$  and if you have  $O$  they are the conditions. You bring them together, efficient cause, then something emerges which is called water, whereas neither  $H$  nor  $O$  nor the fellow who brings them together is watery. And the same applies, of course, especially to man. Man cannot be reduced to his sub-human conditions. If man is understood in terms of the sub-human there can, of course, be no natural right. There is no right and wrong among atoms or lice or apes and so on. But if man is essentially different from the non-human there is at least the possibility of natural right. This one can say is the crucial implication of the Socratic teaching.

But Socrates did not write and everything we know of Socrates is based on reports or presentations: reports of Aristotle, in the first place, and the presentations by Xenophon and Plato. So we have to turn to Plato, above all, for the reason given last time. Plato does not speak of natural law. He speaks of natural right. I refer you to the key passage in the Republic, 501b, from which it appears if it is read with some intelligence, natural right in the Platonic sense is identical with the idea of right or the idea of justice, and Plato's doctrine regarding the idea of right is conveyed above all through the Republic. What is by nature right is concretely visible in the case of the soul, in the soul which is just. The health of the soul, i.e. the perfection of each part of the soul in accordance with the proper order of these parts. So, in other words, the just man is the perfectly virtuous man. To that extent the doctrine of natural right is identical with the doctrine of the virtuous and their natural order. But this does not exhaust the issue because there is also the relations among men: justice in the narrower sense. Plato tries to solve this difficulty by asserting a parallelism between the soul and the city.



The good city has the same structure as the soul. Well, just as you have a rational element in the soul you have one in the city: the wise government. You have a spirited element in the soul; corresponding to it in the city, the good army defending the city. And then you have an element of desire, of satisfaction of the primary needs, and this corresponds to what is now called the economic part of society and what Plato calls the money-making part, so that is not so remote from what we call economic anyway; the money-making part meaning those which take care that all needs of the city, the bodily needs of the individuals are fulfilled.

But this parallelism between the soul and the city as stated in the Republic is defective and the consequence of that is that no fully just city is possible whereas it seems in the Republic that a fully just individual is possible. And the crucial question is then, concerning natural right in Plato, why is a fully just city not possible? This explains why the doctrine of natural right, why the term natural right, occurs so very rarely in Plato. So very rarely. Now why is that so? Now we have to take -- we take a passage from Plato's Laws, which are in many ways more accessible to our understanding than the very difficult Republic. Now I just read it to you from the translation. The question arises, what and how many -- that is in Laws, Book III, page 619 -- "what and how many are the agreed claims regarding ruling and being ruled alike in cities and in households? Is not the right of father and mother one of them? And in general would not the claim of parents to rule over offspring be a claim universally correct?" "Certainly." "Next to this the right of the noble to rule over the ignoble and then, following on these as a third claim, the right of the older to rule and of the younger to be ruled." "To be sure." "The fourth is that slaves ought to be ruled and masters should rule." "Of course." "And the fifth is, I believe, that the stronger should rule and the weaker be ruled." "A truly necessary, compulsory form of rule you have there mentioned" -- that's the interlocutor. The speaker goes on: "And the fifth, which is most prevalent among all kinds of living beings and according to nature as the Theban Pindar once said," namely the rule of the stronger. "But the greatest, the most important, right is, it would seem, the sixth which ordains that the men without understanding should be ruled and the wise man lead and rule. And this, my most wise Pindar, is a thing that I for one would hardly assert to be against nature, but rather according to nature, according to the nature of the law without force over willing subjects." "Most correctly." "Being god beloved and favored by chance I would regard as the seventh claim.

for casting of lots and declare that if he gained the lot he will most justly be the ruler but if he fails he shall take his place among the ruled." These are seven claims to rule, enumerated in an apparently disorderly manner and one sometimes wonders why it is necessary to give so many individual cases which are not clear. But I think you can recognize that. If you look around you you will always find one of these titles to rule. Election of lot is, of course -- must be enlarged a bit. Make it election; but then surely that is one type of rule recognized especially in the West, and there are other types. If you think, for example, of hereditary monarchies this is the principle of the rule of men of noble families over those of less noble families and so on. So empirically the list is, I think, correct, is sufficient.

What we have for our purposes is the following thing. Of these titles, these seven titles, only two are explicitly treated as according to nature: the rule of the stronger, but above all the rule of the wise, of wisdom, intelligence, law, insofar as law has necessarily an ingredient of intelligence. These two natural titles are obviously not necessarily in harmony. That is a theme of the Republic where the harmony is presented when the

philosophers are kings. This means in more specific terms the wise men have an army loyal to them. That means to be kings; an army loyal to them. Then in this case wisdom and force are united. So wisdom and force are two different things, fundamentally different things not essentially belonging together, and yet they must somehow come together if there is to be justice among men.

There is another passage of the Laws which also would be most important to study and that occurs in the sixth book in page 757a to 758a. That is too long now to read. I will state the substance as follows. What is by nature just is the absolute rule of wisdom by which the wise ruler assigns to each what is good for him and therewith good for the city. This implies a crucial assumption: that it is possible to reconcile those two requirements, namely that each individual is given what is best for him and that this is good for the city. The difficulty can be roughly illustrated as follows. According to the teaching of the Republic where this thought is developed everyone should get the job for which he is by nature best fitted. For example, the stronger fellows will become something like blacksmiths and the weaker ones, say, tailors. This was not a profession in ancient times, but I make it easier by this comparison. They said shoemakers in that case. And now -- but of course it presupposes -- perhaps there are too many strong fellows around than you need for blacksmiths or vice versa. Then, of course, the good of the individual would have to be sacrificed to the common good. In other words, someone by nature a blacksmith might have to become a shoemaker and this kind of thing. This I do not want to go; let us leave it at a simple formula which covers a big problem: that what is by nature good for each is also best for the city, the hypothesis on which the Republic is based. At any rate, the key point is absolute rule of the wise. But this is not feasible for the very simple reason -- because of the strength of the many. The wise man may give the best guidance possible, the best direction possible, but this must be accepted and it is not necessarily accepted. Persuasion has a very limited power and that against which persuasion runs up is the bodily brachial (?) power of the many. This is Plato's understanding of the situation, as you see in this passage to which I referred. So the only possible right must be based on the principle: wisdom qualified by consent. Wisdom qualified by consent.

One could say, but this is what Plato does not say, this is the natural right: that the order of civil society must be based on wisdom qualified by consent. But Plato does not say it because he is so aware of the fact that consent means the consent of the unwise, i.e. of the non-philosophers. This is somehow an unnatural concession, yet a necessary concession. To which one could raise this objection -- that is the point which this student raised in his written question when speaking of the opposition between Plato and Aristotle -- must a man be a philosopher in order to be wise, practically wise or prudent? And is practical wisdom not sufficient for the virtue of the citizen in the highest sense, for moral virtue? And here we touch on the root of the problem. For Plato there is no such thing as moral virtue. Plato knows only what he calls genuine virtue and that is inseparable from philosophizing, or vulgar or popular virtue, which is not genuine virtue, which is a calculating virtue; meaning, for example, someone is temperate by mere figuring out that it is not a good policy to be intemperate. It is not based on a fundamental conversion of the whole man as the virtue of the philosopher is.

The very term virtue has been coined by Aristotle. This does not mean, of course, that people did not know -- that no one who has ever -- has never studied Aristotle doesn't know of moral virtue. This beautiful expression, used, I

believe, of Perry Mason, whom some of you will know: "Clean like a hound's tooth and sharp like a steel trap" -- is a simple rendering of the Aristotelian distinction between moral and intellectual virtues. So you see, that is not something far fetched and therefore I'm sure that this -- in a way men were always aware of the difference between intellectual virtues and moral virtues, but it is nevertheless of the utmost importance whether this awareness becomes fully explicit as it becomes in Aristotle by the coinage of the two terms or whether it does not have this full conceptual clarity. Restated in terms of this common sense awareness of moral virtue, in the sense of "clean like a hound's tooth," one can say Plato questions the genuineness of this cleanliness if it does not go together with philosophizing. One can restate Plato's view as follows: moral virtue is a leaky vessel, and in this respect, of course, Plato agrees with the religious view. I come back to that later.

Let me make a provisional summary. Plato's doctrine of natural right consists of two parts: of the doctrine of the virtues and their natural order, and of the doctrine of the best regime as absolute rule of the wise over the unwise. Now I would like to add one point to avoid a misunderstanding. According to Plato's explicit doctrine the best regime is not always possible. Now when it is not possible of course it cannot be just to establish it because the impossible can never be just. Therefore it becomes necessary to make a distinction which is not made in these terms by Plato or by Aristotle but which is meant by them and which has become necessary to make on the basis of the modern complications: the distinction between the best and the legitimate. The best is not always legitimate and the legitimate is not necessarily best. In order to understand that take such doctrines as, for example, that of Tom Paine and some later men, or earlier, connected with Tom Paine: democracy is the only legitimate regime. That is something entirely different from saying democracy is the best regime, because democracy may be the best regime and yet not be possible everywhere. The identification of the best and the legitimate is characteristic of a certain kind of doctrinairism which occurs in modern times from the seventeenth century on. I will speak of that later but I would like to make clear from the very beginning that this is never meant by Plato and Aristotle. The best is not identical with the just or legitimate.

The concept of natural right is central in Plato despite the rarity of which the term occurs. But you must never forget, when Plato speaks of the idea of justice he means natural right, natural justice. Now Plato's Socrates is presented as a defender of justice by deed and speech against the detractors of justice, against those who say that right is only conventional. This makes it all the more urgent to raise the question, why does Socrates speak so rarely of the natural character of right? And I believe one can answer as follows: because what men ordinarily understand by right is not simply natural but shot through with nomos, with convention. Think only of this provisional statement of Plato, provisional even if you understand; precisely when you understand the Republic you will find the official teaching of the Republic provisional. Think only of what appears to be just on the basis of the Republic and how many things which we regard, we all regard, as just as a matter of course are denied there. Think only what it means: the abolition of private property. How much of our notions, even of notions of justice in communist countries, is based on the presence of private property and how much force. Think what it means: the abolition of the family and any other thing. So what Plato -- it is not important whether Plato means these particular proposals seriously. The main point is this: what Plato understands by natural right is rather remote from what we ordinarily understand by right and this is probably the reason why the term



natural right occurs so rarely there: Socrates was suspected of being a subverter of justice or, as they put it, of corrupting the young. I must say a word about that. This is presented, this accusation, in a classic way in Aristophanes' comedy The Clouds, the main theme of which is precisely right or justice. At a certain point in that comedy there occurs a dialogue between the just logos, that is to say the just argument, and the unjust logos, two personages belonging to Socrates' school. The dialogue takes place in the absence of Socrates - you see, they are not puppets, marionettes -- for the benefit of a pupil of Socrates, or a man who wants to become a pupil. The unjust reasoner is weaker than the just one but he makes himself stronger than the just logos. This is a kind of caricature of the claim of certain sophists that they can make the weak cause the stronger one. Well, every defender of hoodlums, of course, tries to make the weaker cause stronger. I mean, there's nothing esoteric about that. Now what is the argument then? The unjust logos asserts that right does not even exist, surely not among men. How unjust they are. But it is said to exist indeed with the gods. But look at the gods. Zeus dethroned and fettered his own father and what is more a principle of right than respect one's parents, one's father. The two arguments are requested by the chorus -- represent each the kind of education for which they stand, the ancient education on the side of justice, the novel education of course, the modern education, on the side of injustice. A brief sketch, the just logos: children have to be silent and orderly. They were not spoiled in the olden times. The music was traditional, sitar playing. The education, the old education, made the victors at Marathon what they were, men of deeds, not of words, excellent training of the body, a strong sense of honor, respect for old age. I believe the issue is as intelligible and as present as it always was and will be. The unjust logos argues as follows. You, the just logos, have spoken against warm baths as a sign of effeminacy, because that makes men soft, but who was stronger and braver than Heracles, the son of Zeus, and baths of Heracles was the name given to hot springs, which clearly proves that Heracles took warm baths. Furthermore, the just speech blames spending one's time on the market place arguing, but Homer praises old Nestor as , as a man on the market place as a speaker. And then the unjust speech goes much beyond it by attacking the whole notion of decency and chastity and moderation in the name of the pleasures of the senses, and he accuses the just speech of teaching a life against nature. The natural life is the life of indulgence. And surely there is a nomos, a law which forbids this indulgence, and if you are caught you are punished but you can easily avoid that if you learn the art of speaking. And the key argument again: what did Zeus do? Is Zeus with his many amours temperate? The end: the just speech admits defeat and deserts the camp of justice, a terrific thing, but this is not the end of the play because Socrates is punished at the end. His school is burned down and so on and so on. So the message of the whole thing is this: the just logos cannot defend himself by argument. The just logos loses in speech but it wins in deed. A kind of inarticulate but very powerful resistance helps the just logos against the unjust logos.

Now the most important point here, most obvious point at least, is this. What is the basis of the position taken by the just speech? Answer: the gods, the gods. It always turns down to this. Now what do we know of the gods? Answer: the stories about them, the myths, and these myths clearly contradict right. The gods are presented in these myths as the opposite of models of justice. And the argument cannot be solved on this level. Now this is exactly the point which Socrates is presented as doing: that he puts right on a different basis, no longer on the basis of myths but on the basis of nature, of that new understanding of nature in terms of the what.

Apart from the Republic the most important Platonic dialogue dealing with our subject is the Gorgias and I must present this because the presentation of justice in the Gorgias is perhaps the easiest way for understanding the later doctrine of the Stoics; more than the doctrine of the Republic. Now the Gorgias -- well, one should not presuppose any factual knowledge (writes the title on blackboard) -- Gorgias. Now the Gorgias is a dialogue on rhetoric. Gorgias is perhaps the most famous Greek teacher of rhetoric and Gorgias, who is the chief character in a way of that dialogue, says rhetoric may be used justly or unjustly without ceasing to be rhetoric, just like boxing. You can use boxing in a fair manner and in an unfair manner. It's still boxing. Rhetoric is then not intrinsically just. It must be subordinated to justice and regulated by justice. Hence, the question arises what is the just use of rhetoric? One can say that's the theme of the dialogue. Now a pupil of Gorgias called Polus -- I will write this name here, Polus -- literally translated, the colt -- he is a rather violent and spirited young fellow -- takes up this point and says -- and defends rhetoric. And Socrates then goes to the offensive and says rhetoric is not an art and he proposes this schema: what are the genuine arts? He makes this distinction: soul, body, and two arts in each case. Here -- that's easiest -- gymnastics and medicine, and corresponding to that, the legislative art and justice. Justice: this is the first distinction. And these two are together called the political art. Is this intelligible? There is an art by virtue of which the body is made strong and healthy, gymnastics, and then there is an art which cures the sick body, medicine. Similarly, there is an art which makes the soul strong and healthy; that is called the legislative art. And then there is an art which cures the sick soul and that is, of course, not psychiatry but the punitive art, jail, prison, gallows; and so on. It's called justice here because the Greek word for right, dike; also means punishment. Now all these arts aim at the best for soul or body, but then there is something which he calls here flatteries, i.e. sham arts. Sham arts: there is a sham art corresponding to each genuine art and the sham art -- for example, what is here? -- this is, I believe, cosmetics, obviously a sham art, say that someone looks as if he were healthy without being it. No, cookery -- I'm sorry -- cookery comes here, and here is cosmetics. Cosmetics is improving. You know, when someone looks pale he is not being treated but he is presented as good looking by means of cosmetics. And there are also sham arts here: sophistry and rhetoric.

The key point is this: the sham arts are distinguished from the genuine arts because the genuine arts aim at the good and the sham arts aim at the pleasant. Now justice means here, then, the restoration of the health of the soul by means of punishment. The original production of health of the soul is a task of the legislative art, i.e. of a human art. Is there, then, no natural law or natural right? That's the question.

Now the result of the discussion of Socrates and Polus, which is the second part of the Gorgias, is this: justice is good -- I do not go into the argument. Justice is good. Injustice is bad. To do injustice is worse than to suffer injustice. To undergo punishment, i.e. to be cured from injustice, is better than to remain unpunished. Accordingly, the use of rhetoric is not to defend oneself and one's friends but rather to accuse oneself and one's friends if one has done wrong. And if one may harm anyone one should defend one's enemies so that they will not undergo punishment and will remain wicked. That is, however, somewhat joacular. In other words, rhetoric is useless for him who does not intend to act unjustly.

At this point the third, the most impressive, character of the dialogue appears, Callicles. He is an Athenian citizen whereas the two others were foreigners, say Gorgias and Polus. Now Callicles is presented as a lover of the demos, of the common people. He is, of course, not a democrat; he's the opposite of it. But he loves the demos in the sense that he wants to rule them. He has a passionate desire for them. And Socrates, as opposed to him, is a lover of philosophy. Now from here on the case of justice is treated as identical with that of philosophy. Keep this in mind. In Aristotle the case of justice is not identical with the case of philosophy.

Now Callicles makes this assertion: to act unjustly is bad and base only by virtue of convention, not by nature. By nature it is bad to suffer injustice, to get hurt, not to inflict hurt, and the convention or the law is the work of weaklings with a view to their interests. They establish equality because that improves their lot. In other words, their justice has as unjust or selfish motives as the frank injustice of the others. According to nature, the better man should have more than the worse one and this is called by Callicles the law of nature. Socrates will realize this, Callicles tells him, when he abandons philosophy and turns to greater things, i.e. real man's work, to political life. The philosopher, Callicles says disgustedly, does not know the laws of the city and hence is wholly unable to defend himself if he is accused. You know, he is worse off than anyone.

Now Socrates argues first as follows. What does this right of the superior man to have more mean? In the first place, who are the superior ones? The stronger ones, simply? Callicles says yes. But, Socrates argues very well, the many assembled are obviously stronger than the single outstanding individual and the many lay down the laws treating everyone equally. Equality, i.e. to treat everyone like oneself, is then not merely conventional but by nature because it is established by virtue of the right of the stronger. There is no conflict between nature and convention. Someone who smiled saw the ironical character of the argument -- that is indeed true -- but on the other hand it shows that Callicles has not spoken very clearly. His reply is this. Well, don't be absurd. I don't mean mere brachial, muscular superiority. The superior man is superior not only in bodily strength but also in intelligence. The more intelligent man should get more than the unintelligent ones. Again, the question arises: more of what? Should they get more food, more drink, more clothes, more shoes? This all doesn't make sense. Then it appears, the man most able to rule the city ought to rule the city. That's fine, but Callicles very foolishly adds with a view to their own interest, or rather enjoyment. In other words, they should get these nice houses outside of Moscow with special vodka and special caviar for that purpose. They should view the city to the satisfaction of their own desires: luxury, licentiousness, and freedom. This is the real life and this is happiness. Whereupon Socrates says: no, I think a moderate life is much better than a life of intemperance, and so by this argument the issue of justice is replaced by that of moderation or temperance. In other words, that the superior man should rule is o.k. but with a view to what? What way of life should they lead and this is the issue, temperance or intemperance, moderation or immoderation. And this life of moderation, no longer of justice, appears to be the life according to nature. Socrates restates the issue at this point very clearly. The issue is this: is the good identical with the pleasant, as Callicles somehow asserts, or is it fundamentally different from the pleasant? And Socrates proves that the good is fundamentally different from the pleasant. And that is, by the way, not so difficult to prove because one of the arguments which Socrates uses is, for example, when you speak



of a good man we do not, obviously, mean by that the man who has the greatest fun, has the greatest amount of pleasures. So we do not mean by good the same as by pleasant. I think that's a good argument. So the good man is not the man who has the maximum of pleasure. For example, a coward running from battle has much greater pleasure than the brave man who sticks it out, and we call the one a coward, i.e. a bad man, and the other a good man.

One can also state it as follows, coming back to what I said earlier, if the good is identical with the pleasant there cannot be a primary common good because the pleasures are here understood as bodily pleasures. More generally stated -- what Socrates had in mind -- the primary phenomenon is not pleasure, but man's natural constitution. A man's pleasures differ from those of a donkey or a vulture. Why? Because a vulture or a donkey has a different natural constitution than man. Men's pleasures depend on human constitution. The human constitution is a fundamental fact, not pleasure. Only on the basis of such a thing as the natural constitution of man can there be something like natural law and natural right. This, by the way, became a backbone of the whole natural right and natural law tradition throughout the ages and the very great change which has occurred in the seventeenth century in modern natural right can be understood from here: that here natural right or natural law is somehow divorced from the natural constitution of man, as I will show later. To return to Socrates, the end is the good in contra-distinction to the pleasant. But now, what is that good? To discover the good is not possible for everyone, Socrates says (aside: and this again refers especially to you) but only to the technicos, to the man who possesses the knowledge or art involved. Therefore it becomes necessary to raise the question what is a techné? What is an art or science?

An art or science requires knowledge of the nature of the thing to be treated and of the causes of what the art does. For example, the possessor of an art is able to tell you why he does what he does. That is the causes. And he must know the being which he treats: whether the being is a human body in the case of medicine or wood in the case of the carpenter or whatever it may be. And every art does what it does with a view to the best. The artisan or technician looks away from the thing he immediately handles toward something, toward a form, an idea, an eidos, to be impressed on the thing on which it works. He looks toward some order so that the thing he is trying to produce, be it a table, be it a healthy body or a healthy soul, becomes orderly or well ordered. Now to apply it to our case, the physician of the soul tries to imprint the order of the soul, in contra-distinction to disorder, on it. The art in this art which was here called the legislative art is preceded by the perception of an idea, of an order. So, to apply it to our case here, the political art improves the citizens, makes the city good, and it does it by looking at something, at an idea. We must see what that idea is. The opposite, the sham art, factory, is an art which pleases the citizens without any concern with making them good, satisfies all their desires, makes the city rich and powerful; it is therefore powerful but not good. And Socrates goes here so far as to say that all these famous statesmen of Athens, Themistocles, Pericles, and so, were all sham artisans, not genuine; sham politicians. The true political art makes the citizens just and moderate, makes them healthy in soul. A man with a sick soul must be prevented from enjoying many things which a man with a healthy soul may enjoy and the man with a healthy soul may enjoy anything he likes. So the key point is to make good souls rather than establishing laws in the narrower sense. Justice regarding gods and men simply flows from moderation or temperance --

(Change of tape).

All virtues flow from it and hence it is sufficient to be moderate in order to be happy.

First of all -- there are quite a few questions -- what is that eidos, that idea to which one must look in order to become moderate and generally good and happy? Where do we see that idea? Answer here given: in "this whole," this universe, which men therefore call cosmos -- cosmos meaning originally something like ornament, good order -- which is held together by geometric equality. The visible cosmic order, an ordered hierarchic whole, is the foundation and support of justice. This is the answer given in the Gorgias. But the question arises, in what sense does the visible order of the whole support justice? The whole may be as ordered as you please. There may be laws of nature, say, in the Newtonian sense. This does not yet necessarily mean that it supports justice. Is it true that the good man who contemplates this order and builds himself up, edifies himself -- that's the original meaning of edification -- in accordance with it will not suffer injustice? Of course not. He will suffer injustice but this is said to be irrelevant. Suffering injustice does not affect the just man's goodness. Obviously not. Yet it is also admitted that suffering injustice is an evil. How can one avoid that evil of suffering injustice. Answer: political power or participation of it. You participate in political power even when you have only the vote, but there are better ways of doing that. If you have political pull you have much more protection. But this, Socrates says, doesn't work. Look at the fate of Themistocles, Timon, and Pericles, who all underwent all kinds of unpleasantnesses although they had very much political power. And, above all, the attempt to avoid suffering evil requires one to do evil. I hope this does not need a long coat (?). At any rate, that would be a good paper for an introduction to social science, a discussion of this proposition: does the attempt to avoid suffering evil require one to do evil?

But now the other difficulty: may not the unjust man make a just man entirely miserable, blinding him, torturing him and his children and so on and so on? This can, of course, not be denied. It is not denied by Socrates for one moment. But is it true to say virtue is simply identical with happiness, as Socrates said, if this is the case? If the just man may suffer all these terrible things can one then say it is enough to be just to be happy? Now the basis of the whole thing is, of course, the distinction between the good and the pleasant. Can one say, as Socrates does, that pleasure and pain are entirely irrelevant for happiness. This is the difficulty. Toward the end of the dialogue the following remark occurs: to arrive in Hades having one's soul fraught with many unjust acts is the uppermost of all evils. In other words, no evil which a man can experience in this life in the way of torturing and all other beastlinesses can be compared with the evil of coming to Hades with one's soul fraught with many unjust acts. In Hades it is no longer possible to do or suffer injustice, but only to be rewarded for justice or punished for injustice. That means: while there is no sufficient support for justice in "this whole," the visible universe, there is sufficient support for it after life, in Hades: the punishment for the wicked in \_\_\_\_\_ and the just men are sent to the islands of the blessed. The just life is expedient after death. So, in other words, the teaching regarding justice in the Gorgias depends on life after death. Socrates seems to need rewards and punishment after death because without them the preference for justice would not be powerful enough. Justice is said to have cosmic support, but what is the precise relation between the cosmic order and the just human order? This remains dark. Is it because of this fact that Plato does not speak in the Gorgias of natural right: because what is intrinsically right is not sufficiently supported by the nature of the universe?

The just life is treated throughout the Gorgias as identical with the philosophic life. Why is this so? That is shown by the analysis of art or techné. It is necessary -- in order to be fully just one must look away from the human being, the city, and so on, which one handles to the cosmic order, and only with a view to the cosmic order can you establish justice in yourself or in your city. But this is not quite clear because in the same context an Athenian statesman, Aristides the Just, is highly praised, who surely was not a philosopher. In a word, the difficulty is that Socrates does not tell in this dialogue what justice is. The praise of justice requires that there be rewards and punishments after death. These rewards and punishments are the subject of a myth told by Socrates toward the end of the dialogue, but a myth is not genuine knowledge. The conclusion would be there is no genuine knowledge of the most solid support for justice. The dialogue Gorgias does not tell us what justice is and what its support is. It merely praises justice. The dialogue dealing with rhetoric contains a rhetorical treatment of justice.

Let me say a few words about the relation of the Gorgias and the Republic. Both dialogues deal with justice. Both are tri-partite, which is quite clear. Here is Gorgias, and here you have old Cephalus -- those of you who remember the Republic -- the old man, Cephalus, just as here the old man, Gorgias. Then you have here Thrasymachus, also a rhetorician by the way -- oh no, Polemarchus -- I'm very sorry -- Polemarchus. And here you have Thrasymachus. This is quite obvious and frequently observed. The difference is this, it seems to me: that the Gorgias is a rudimentary version of the Republic and the proof of it is that only in the Republic is the question, what is justice, raised and answered and it is made clear -- what is not made clear in the Gorgias -- why justice is identical with philosophy, and this has to do with the fact that in the Republic the doctrine of ideas is explicitly stated, whereas in the Gorgias its place is taken by the visible universe. And in the Gorgias the theme is rhetoric. Justice comes in only secondarily. In the Republic the theme is justice and rhetoric comes in only secondarily. Above all, whereas in the Gorgias Plato leaves it at the radical separation or opposition of the good and the pleasant, the Republic claims to show that the life of the just man, i.e. of the philosopher, is the most pleasant life. There is not this radical opposition. In the Republic there is a solution to the question of justice in this life, a political solution at least on the surface, whereas in the Gorgias only life in the bad cities is considered, i.e. in unjust cities. And a last point connected with all these things: in the Gorgias nothing is said about the different natures, about the fact that not all men are by nature capable of being philosophers. Philosophy is preached as a goal for everyone just as justice, whereas in the Republic this radical difference among men regarding the possibility to become philosophers, i.e. to be fully just, is crucial and even central.

Before I see whether there are any difficulties I would like to make only one assertion now which I will be able later to develop if I have time; namely that the view which is presented by Socrates in the Gorgias is again stated in the Republic, by Glaucon, but this I will develop later. Now first of all let us see how far I have made myself intelligible -- understood. Well, may I address a question first to you? Are you able to formulate a difficulty beyond that which you stated in writing?

Q: Is your point in going through the argument of the Gorgias that an attempt is made there to base justice upon the visible universe and that this attempt fails?



S: You can put it this way. This attempt, as made in the Gorgias, fails. Yes. Well, in what precise sense does it fail? It is never suggested there that the order of the whole does not give us some indication about the order of the human soul, but it does not give us an answer -- but at the price that we must be completely indifferent to pleasure plus self-preservation if we take justice seriously; and this is a rather tough proposition for almost all men. Is this clear? I mean, to say you must be just but this means you have to be wholly indifferent to pleasure, you have to be wholly indifferent to your self-preservation. That's very harsh. Whereas the Republic does not say that. In the Republic your self-preservation is taken care of to the extent to which it can be taken care of because you are a member of a just society in which you are sure you will never be unjustly hurt, and, of course, war -- this is inevitable, this kind of danger to self-preservation. I mean, there is no remedy for that except a really reliable world order, world government, which is as impractical today as it has been at all times. Yes?

Q1: Is the appeal to the sanctions of Hades that is made in the myth at the end -- does this indicate somehow a failure to be able to find an adequate concept of justice within the visible order?

S: No. I mean, if you mean by concept of justice the content this is fine, but the question is -- how shall I say -- the attractiveness or, as they say now, the motivation for being just is not clearly established as a necessity. And very simply stated, to be just means to be wholly indifferent to pleasure and pain and especially to self-preservation radically. This is different from what we ordinarily understand by justice because there is somehow assumed that there is some harmony between reasonable self-interest and justice. I mean, not the self-interest of a completely mad, power hungry individual, but of a sensible man. That is not provided for here. This is a difficulty. Now Socrates says, of course, that this myth is not a myth although he knows Callicles is going to call it a myth. It is a logos. Now the distinction between mythos and logos was by that time quite well known and it had roughly the meaning, a myth is a fable and a logos, used in contra-distinction to mythos, is a true account. And Socrates says no, it is not a myth but it is a logos. But what does this mean here? That is not without irony. It means this: the account is partly based on what Homer says and partly on what Socrates has heard from unnamed men. This, of course, doesn't vouch for truth; and especially poets, who are known to lie in many things. But on the basis of these more or less dubious reports Socrates reasons, figures out, so to that extent but only to that extent is it a logos. It is a logos to the extent that it includes Socratic reasonings but its premises -- that there is a judgment of the dead after death -- is, of course, not established. That is taken over from what people say, especially what the poets say, so it is in fact a myth and the indirect proof of it is that the whole issue is taken up in a much more comprehensive manner in the Republic, which also ends, of course, with a myth but with a different myth, a very different myth. I mean, I cannot possibly take up here the question of the Platonic myths in general, which one would have to take up to reach clarity, one reason being that I do not have clarity about it but I have certain notions about that, indeed. But still myth is not -- that is clear -- cannot be as evident and as certain from Plato's point of view as a logos is. That's clear. Yes?

Q2: I received the impression in the last two lectures that the best regime simply is not possible. Is that a correct impression?

S: Yes, that's correct in my view. Yes.

Q<sub>2</sub>: Well, now, on page 139 of your book on natural right, you say, "But the best regime, as the classics understand it, is not only most desirable; it is also meant to be feasible or possible, i.e., possible on earth." Does that mean they meant it to be and then they discovered it wasn't?

S: Oh, no, no, no. It's not that simple. I mean, there is surely a footnote in that neighborhood where passages are indicated which amply prove what I say. But you must make a distinction. Now listen to me. Forget about my book. The best regime cannot be best if it is not possible. I mean, you must never forget, the ancients, the classics, are very sober men. They never said, as someone says in Goethe's *Faust*, him I love who longs for the impossible. They were very pedestrian compared with that. They would say he who longs for the impossible is to that extent foolish. But an entirely different question is whether a given order said to be the best regime for certain reasons is in fact meant to be the best regime. Do you see? The best regime presented in the *Republic* is -- that I think one can prove -- not regarded as possible by Plato and hence, not the best regime. The best regime must combine the two elements of wisdom, which is amply provided for in the *Republic*, and consent, which is not provided for at all in the *Republic*, and therefore the practical solution is something -- in the strict sense of the term, a mixed regime, mixed of wisdom and consent. And how they -- I mean, there are various forms which that can take and Plato presented what he regarded as the best possible in the *Laws*.

Q<sub>2</sub>: Well, that raises a difficulty for me, because as you defined the term nature as growth or the term of growth it seems as though that which is supposed to be by nature -- that is the idea of justice about natural right -- is not possible.

S: Yes, but excuse me -- well, we must make a distinction between the individual and the polis, and as far as the individual goes -- permit me to state it very roughly, in general -- it is possible for the individual to reach his full growth, according to Plato; not for all individuals. But there is, so to say -- the coiling for the individual is the perfection of man; the coiling of the polis as polis is much lower, and therefore there is something essentially artificial in the polis, which does not mean that the city is not necessary and indispensable but it is something which is not -- well, take a very simple example. The city is a particular society, i.e. a segment of mankind forms the polis. The line is drawn fundamentally arbitrarily. Fundamentally. Which doesn't mean that there are not good reasons of convenience, but they are fundamentally arbitrary. Take it this way: cities came into being frequently in ancient times by the settling together, of a number of clans. Now whether those seven clans or eight clans united was entirely an arbitrary matter. Yes, but once it was decided and, say, clan eight was left out they were foreigners and this meant that their status was -- in right -- was radically different from that of citizen, and that refers not only, in this view, to what we call positive law but it has a much broader bearing, as you see from the fact that a variety of cities, of political societies, means the possibility of war. That's inseparable. Now when you look how the most simple roots of conduct are necessarily transgressed in war, wholly independently of whether the war is just or unjust -- for example, not killing, not stealing, not lying, not cheating -- it's a *long scene* -- you see how grave that is. People whom you would ordinarily treat as friends, i.e. fellow citizens, are treated, by the fact that they are not fellow citizens, as potential enemies. Plato takes

this very strict and, as I stated last time, the noble lie which is presented there where the earth is replaced by the land, the territory, meaning that part of the earth, reveals the whole difficulty. The soldiers, it is said in the Republic -- and the soldiers are, of course, that part which is active in war more than any other part -- the soldiers must have the character of good dogs, and good dogs are characterized by the fact that they are nice to acquaintances and nasty to strangers. The soldiers must have this quality. And Aristotle says quite well in the Politics one mustn't be nasty to anyone. I mean, sure. But then when you look at the facts of the case, especially war, you can say in a sense the decent soldier is not nasty to the enemy by killing them and so on and so on; but you can also say it is a rather subtle distinction between what the soldier does to the enemy and nastiness. You know, this is a difficult question. One can say Aristotle's view is surely, as he states it, the nicer view, but perhaps Plato sees the situation, admits the situation, more frankly than Aristotle does. Aristotle has altogether a certain quality which -- I do not know everyone would agree with me there -- compared with Plato, of this wonderful woman, Jane Austin, if you know -- you know, who -- she never speaks of the really terrible things, which makes her so very charming. But that means also -- but being a great artist, of course, she lets us divine the things of which she doesn't speak. Aristotle does the same. Plato speaks with great frankness. This is the question. Now how is this related to the overall issue? In other words, what was your initial question?

Q2: (Brief inaudible reply).

S: This ceiling: that was the question. According to Plato there is a ceiling to the city, a ceiling which is incompatible -- which is, at least, in a tension to the highest perfection of man. Now when Aristotle teaches that the city is natural that is, in a way, his criticism of Plato. Plato's polis is not natural in the Aristotelian sense. Something may be a necessity for man as man, and in this sense natural and yet in another sense also not natural for the reason given. Let me state it -- how can I explain this most simply? It is possible to say, of course, that the political society is in perfect agreement with man's highest aspirations, in the sense that they necessarily find their fulfillment within the city. In a way Aristotle seems to say just that. But there have always been people who denied that and who said that what is highest in man as such transcends the city. I mean, it is clear from the religious view. I do not have to point that out. It is also clear, in a way, from the modern liberal view: the demand for a private sphere impervious to government, to political decisions. There is also implied there is something most important; the highest is trans-political. Do you see that? Plato also said that. Only Plato says there is one and only one thing of which one can justly say that it transcends the city and that's philosophy; not comedy, not tragedy, not anything else, because comedy and tragedy obviously -- or literature, as we say, and poetry -- obviously affect the morality of the society -- are therefore subject to control by the society. But not philosophy: in its nature it cannot be subject to that. Aristotle, as I say, seems to say -- but in fact he admits, of course, also that philosophy transcends the polis. Yes?

Q2: My problem here is that man is by nature social. Now if man is going to be capable of reaching a higher ceiling, of reaching that idea of justice which is then natural right how can he not be capable of forming a society in which it can be reached also? Man is by nature social.

S: Yes, that is a clear question and permits me of a clear answer. Plato



says -- I mean, again stating in textbook-wise -- to be just requires to have a full grasp of the idea of justice. It is not identical. . . . (about ten words unclear) but that's a necessary if not sufficient condition. Is this clear? Now Plato further says you cannot possibly have a clear and full grasp of the idea of justice if you have not had a very stiff training: Book VII of the Republic, a very stiff training. And secondly -- and firstly, rather, you must have certain natural gifts for acquiring that training. These gifts are not possessed by all men nor are all those gifted by it given the training or willing to undergo the training. Hence, a fairly small minority of men has the adequate grasp of the idea of justice. This being the case you cannot have a society of just men. Differently stated, and perhaps coming nearer to present-day discussion, if you understand by a rational society a society where every member, or at least the large majority, is rational then Plato says a rational society is impossible. You know? It is impossible. You can have a society which comes closest to reason. A society comes closest to reason if its ruling part consists of rational men, but this is, of course -- depends on all kinds of circumstances and the greatest difficulty is a very simple one. These men have to come to power -- whether by election or by any other title they must, at least, be recognized as deserving to be the rulers. They must be recognized as deserving to be the rulers by the non-rational men. If you state it abstractly this difficulty is very clear. How can non-rational men recognize rationality. I know it is not quite as bad as it sounds, but stated generally and baldly it seems to be utterly impossible. How can unmusical men decide who is the best musician? How can men knowing absolutely nothing of physics distinguish between first rate physicians and non-first rate physicians, and so on. This is the problem: the problem of rationality and non-rationality combined. Now the difficulty is very great and one must state it in bald terms in order to see the grave difficulty, and the difficulties are so great that at a certain moment men decided to turn the whole thing around and say if we start as Plato and Aristotle too does, from the wisdom angle, we can never reach a practical solution. It will be theoretically very clear, but what can you do with it? And then let us start from the other angle, let us start from the consent angle and see, then, how we can get a society on a consent basis and then see how we can get in or smuggle in wisdom. This is a modern -- it is a modern problem. I think that sounds very crudely expressed, but I believe it is so that this happened. This was the great change which was made in the seventeenth century and if one has understood the difficulties of the classical position one can understand very well that people tried to turn the whole thing around, but one must also see that the modern position is not free from difficulties. I mean, you only have to consider what representative government was meant to be: the device by which the unwise would elect their most virtuous and wise fellow citizens. I mean, if you read the modern literature -- well, in present day political and social science -- political science -- the whole thing has been abandoned. Yes, we know that. But as long as and to the extent to which the discussion still takes place and has taken place you have seen what difficulties there are. Read Mill's Representative Government, for example. Read The Federalist Papers. There is no elegant solution possible on either presupposition. Only the modern solution has, at first glance, a much greater plausibility because that seems to be immediately political, whereas the classical seems so abstruse, but it is as little -- is not abstruse.

Q3: Wouldn't the logic of Plato's argument compel him to assert that at least the individual is capable of reaching the ceiling as if outside society (?) or is the external justice necessary to the good society?

S: No, that is very good, what you say. Very good. That is exactly what Aristotle says, discusses at length, in the third book of the Politics, of this superior man, and of whom he says he cannot be treated as a part. He is the whole. Now Aristotle knows that this is a purely theoretical problem, but it is necessary to think it through in order to understand the essential limitations of civil society. Read the third book of the Politics, second half of the book.

Q<sub>3</sub>: Does Plato --

S: Yes, sure. Fundamentally there is, in this respect, no difference. In this respect; no.

Q<sub>3</sub>: In other words, the external justice is part of the totally good life, the perfectly good life.

S: Yes, but the question is then -- yes, this leads to very great difficulties because our ordinary understandings of justice all presuppose a kind of equality of a large body of citizens. That is Aristotle's notion of natural right. And this becomes a question with a view to the problem of wisdom. I think we cannot fruitfully discuss the whole thing before I'm through with my account of Aristotle, which of course is not meant to exclude clearing up of particular points. May I say one thing? I hope to be able next time to come to Aristotle and if you could bring with you your translation, or if possible, text, of the fifth book of Aristotle's Ethics, because there's only one page and we must discuss it rather thoroughly. What did you want to say?

Q<sub>4</sub>: Did Plato in the Republic -- did he finally conclude that the good society is not possible in the Republic -- or did he do it later in the Laws?

S: Well, he never said so even in the Laws quite explicitly, that it is impossible. He comes nearest to it when he says in the Laws that this scheme of the Republic is possible only among gods and sons of gods, which would seem to mean it is not possible among human beings. Yes? That's all that we need. I mean, this admission would seem to settle it but that would lead -- we would have to go into the question, what does Plato understand by sons of gods? Maybe he means by it first rate men. It is hard to say. So in the Republic he insists all the time on its possibility, but he makes the conditions for its actualization ever more difficult, that if one uses one's head in reading, which I believe one should do, then one sees it is impossible, because when he says only philosophers are kings then you can imagine that it's possible. Everyone has heard something of Marcus Aurelius -- you know, this kind of thing. Pardon?

Q<sub>4</sub>: (Inaudible).

S: That is not -- I don't believe -- What Plato does is this, in my opinion: represents the solution to a problem of the squaring of the circle and he shows how the circle could be squared if it could be squared, meaning how the harmony between polis and philosophy can be brought about -- under what conditions. But when you read it carefully, and especially the end when he says not only rule of philosophers but expulsion of everyone older than ten from the city, then he lets the cat completely out of the bag because when you think of it where would you ever find citizens who would hand over government to a philosopher or philosophers with this rider attached? I mean, they might be in a terrible situation in which they would say, well -- you know, just as the English accept Winston Churchill after all in 1939, you know, when it was -- they would have done

almost anything when they accepted also Winston Churchill. So this kind of things happen, but that they behaved toward their own government and give him a right which perhaps not even the worst conqueror would do more than that. Yes? I mean, take their children away. I mean, you know what happens in a case of conquest in olden times. I mean, the families were not kept together. And so why should -- I mean, anything would be preferable than to do that. It is impossible; and there are other arguments by which one can support it. But as I say, one can very well show by a fictitious example, by a deliberately fictitious example, some essentially important things; for example, the point mentioned by a student before that the best regime must be possible and what this question of possibility means, i.e. compatible with the nature of man. This character of the discussion is exactly the one which would have to be applied to the serious question of the best regime, and it is here ironically applied. But one can learn to distinguish between the intrinsically tenable and the one which is fundamentally playful, although the play is a very serious play. The play is meant to show us what the limitations of our expectations on any political arrangements must be. So next time I will say a few words about Plato and then turn to Aristotle.



Lecture 8: October 31, 1962

... the right order of the soul, or which is the same thing, the natural order of the virtues to which the legislator must look in making the laws. The difficulty regarding the Platonic natural right teaching is this: justice is primarily the social virtue regulating men's relations to others, and by justice one understands, to begin with, giving or leaving or assigning to everyone what belongs to him. But justice is also said to be good and giving or leaving to everyone what belongs to him is not necessarily good. He may misuse it. If justice is to remain good the whole social order as generally in existence at all times must be replaced by a radically different order which order alone is then strictly just. That's the teaching of the Republic. And the characteristics of that order are absolute communism and the absolute rule of the wise. What is by nature just is to give to each what is good for him by nature. Now it is clear, if this is by nature right it must be diluted very considerably in order to be brought into harmony with what is possible. It must be diluted by something which is not by nature right, which is only a kind of inevitable right but not natural. And this other thing by which natural right must be diluted is that which is acceptable to the unwise who, among other things, insist on having property of their own, wives and children of their own, regardless of whether they deserve to have them and are able to use them properly or not. This is a very rough sketch of what appears from the Republic and the Laws.

I turned then to a discussion of the other Platonic dialogue dealing with right or justice, the Gorgias, and I'll repeat the main points. Socrates opposes the view that all justice is conventional. What then is by nature just, by nature right? Again, the right order of the soul and of men's mutual relations, and this is to be brought about by the legislative art, an art; not mere fiat. Every art is based on nature; in the first place, on that on which the art works, its material, on which it imprints an order or form as the shoemaker imprints the form of the shoe on the leather, and this form itself. Now as regards that particular art, this artisan called the legislator, toward which does he look when imprinting the right form of the human soul? The answer is he looks to this whole which is therefore called cosmos, order, because of its orderly character, which is held together by geometric equality, by proportionate equality: unequal things to unequal people, equal things to equal people. The legislative art is based on cosmology, on the knowledge of the whole. The fact that geometric equality, or as we can also say, a hierarchic order, is the cosmic principle is the support for justice. Well, in this respect there is no disagreement between Plato and Aristotle. When you read the beginning of the Politics, the first book, when he speaks of the relation of the inequality essential to nature, the hierarchic order, that is the support of justice for Aristotle as well. The alternative rejected in the Gorgias is the identification of the good and the pleasant. Socrates asserts, and in a way proves, that the good is different from the pleasant, so much so that there is no relation whatever between the good and the pleasant. The best has nothing to do with the most pleasant. Virtue, hence, appears to be the control of pleasures and this means that virtue is essentially self-control or temperance or moderation; in Greek, sophrosyne. Justice is, as it were, replaced by moderation or self-control. Justice flows from self-control. A man who is well ordered in himself cannot but be just. That seems to be the implication.

Now the radical distinction and even antithesis of the good and the pleasant leads to the following consequence. Justice requires complete indifference to the pleasant and even to self-preservation. There is no harmony between justice and well being except after death, and that is brought out in the myth at

the end of the dialogue. Now the view presented by Socrates in the Gorgias is presented within the Republic by Glaucon. I would like to say a few words about it because I think some understanding of the Republic is indispensable if one wants to see what the issue of natural right is about.

I cannot assume that everyone of you has read the Republic or that he remembers the Republic so I must remind you of some well-obvious facts. In the first book Socrates refutes the thesis of Thrasymachus, the famous teacher of rhetoric, according to which justice is essentially conventional. Now this refutation is not very clear and sound and Glaucon is justly dissatisfied with it, and he asks, therefore, Socrates at the beginning of the second book, first, to what kind of good things does justice belong? And Socrates says justice belongs to those good things which are choiceworthy both for their own sake and for the sake of their consequences, just as health, for example. But most men regard justice as being good in the sense in which taking medicine is good; that is to say, as a necessary evil or perhaps even as a necessary good, meaning it is not good in itself. They hold that justice is good only because of its consequences; that honesty is good only because it is the best policy. Now Glaucon wishes to see that justice is also good in itself. Therefore one must view justice by itself while disregarding completely its consequences. Accordingly, he draws a picture of the perfectly just and the perfectly unjust men taken in themselves without any consequences attached to them: the perfectly unjust man who does not seem to be unjust but is regarded as just, and then the perfectly just man, on the other hand, who does not seem to be just but rather to be unjust. Now it is clear that if we strip the just man of all good consequences of justice which derive from the fact that he is known to be just he leads a very miserable life. He lacks all pleasure and has no concern for self-preservation and he is therefore completely miserable, whereas the perfectly unjust man who pretends to be just cleverly and is regarded as just by all his fellow citizens leads a wonderful life. Now Glaucon commissions Socrates to prove that the perfectly just man who possesses nothing but his virtue and his justice is perfectly happy because he is so perfectly just. Glaucon commissions Socrates, in other words, to prove what Socrates has asserted in the Gorgias: that the man concerned with justice and nothing else, disregarding completely pleasure and self-preservation, is perfectly happy. There is one great difference, however, between Glaucon's just man and the just man sketched by Socrates in the Gorgias. Glaucon's just man lacks art, techné, and hence -- and the more, philosophy. He is a simple man, a simple man who has no techné of any kind. Now it is important to see that when one looks at the Republic as a whole that Socrates does not prove what Glaucon wants him to prove: namely, that Glaucon's just man is happy because he is just and has no intellectual perfection, no art of any kind. On the contrary Socrates only proves that the philosopher as a truly just man leads an intrinsically pleasant life. This much about the relation of the two dialogues and the light this throws on the Platonic doctrine of justice. To repeat the key point: all certainty as to the meaning of justice is insufficient if it cannot also be shown that justice, properly understood, is good. That is the key point.

One can also say that the paradoxes of Plato regarding this subject are all due to this fact: that what we ordinarily understand by right is not, according to Plato, by nature right. Take this example which I mentioned before: to give or leave to everyone what belongs to him. That is what we ordinarily understand by right. This is not by nature right because what belongs to a man is here defined by law and the law is not necessarily wise and salutary and therefore all the difficulties. And if it is thought through then you arrive at the

solution that only that can truly belong to a man, what is by nature good for him, which he cannot but make good use.

I would like to illustrate this position by a few more examples. Let us take simple rules of justice. For example: first come, first served. Is this simply valid? Of course not. Only if all comers are equal. Let one comer be a pregnant woman. Let one comer be a man on very urgent public business. Would not justice require that they come first and not the first comer? So one would have to say all right, equal things for equal people but unequal things for unequal people, whatever the inequality may be. Men are surely equal in some respects and unequal in others. Not all equalities and inequalities are relevant here. For example, that someone should be particularly good looking or bad looking would not be a serious consideration. The politically most relevant inequality is that in regard to wisdom or prudence. Here we seem to have a clear natural principle, but as I have indicated before according to Plato this must be qualified by consent, consent on the part of the unwise; that is to say, of those who as such would seem to have no title. This is not a natural right. I take as another example a story taken from the first book of Kings, chapter 21. I read only the most necessary verses.

And it came to pass after these things that Naboth the Jesrealite had a vineyard which was in Jesreal by the palace of Ahab, king of Samaria, and Ahab spoke unto Naboth saying "Give me thy vineyard that I may have it for a garden of herbs because it is near unto my house, and I will give thee for it a better vineyard than it, or if it seems good to thee I will give thee the worth of it in money." Fair, isn't it? And Naboth said to Ahab, "the Lord forbidded to me that I should give thee the inheritance of my fathers unto thee." And Ahab came into his house heavy and displeased because of the word which Naboth the Jesrealite had spoken to him for he had said "I will not give thee the inheritance of my fathers". And he laid him down upon his bed and turned away his face and would eat no bread. So much was he concerned with getting that vineyard? Now Jezebel his wife came to him and said unto him, "Why are thy spirits so sad that thou eatest no bread?" And he said unto her, "Because I spake unto Naboth the Jesrealite and said unto him, 'Give me thy vineyard for money or else if it please thee I will give thee another vineyard for it.'" You see, he doesn't say to his nasty wife that he had spoken of a better vineyard? "And he answered, 'I will not give thee my vineyard.'" And Jezebel, his wife, said unto him, "Does thou not govern the kingdom of Israel? Arise and eat bread and let thy heart be merry. I will give thee the vineyard of Naboth the Jesrealite."

And then she makes a kind of judicial (?) murder and with great success and Ahab gets his vineyard. What a famous story about justice. Now let us see what light this -- how this would have to be analyzed from the Platonic and, in a way, also the Aristotelian point of view. Now that the action of Jezebel is flagrantly unjust and that Ahab's original procedure was fair I think everyone will admit unless he is misguided by some methodology. At any rate, no one can deny that Jezebel acted illegally and Naboth and Ahab acted legally. But the positivists will say, why should one prefer acting legally to acting illegally? Ultimately that's a non-rational preference. Some like legal action; others don't. Conventionalists, with whom Socrates argues in the Gorgias and the Republic, would say this: no, no, the positivists -- that is too simple. The case for law as a necessary evil for the many is very strong, but it is, indeed, only a case for a law as a necessary evil for the many, not for the really --



for the hombres, for the he-men. And from this they would ultimately say Jezebel is, of course, in a much better position because she is not exactly a he-man but a she-woman, if I may say so. Now -- but let us now turn to a more -- slightly more analysis. Now what is the background of this argument? Kingship -- kings are instituted for the common good. If the vineyard had been needed for a public purpose, say for making a ditch against tanks or whatever it may be it could have been taken away from Naboth justly, but of course fair compensation because there is no sense in taking it away from one single citizen and all other citizens retain their possessions. It is unfair that a single man should bear a public burden which no one else bears. Yes, but that is not the ground given here. The ground given by Naboth is the sacredness of the inherited estate or lot. This is the key point. I mean, he does not refer to these simple principles to which we referred. He has a very specific one: the sacredness of the inherited lot. And this is obviously not a universally valid principle, as you know. In all modern societies this has long been abolished. Now how does it look from Plato's point of view? Now Plato would say the principle to which Naboth appeals is the sound one. In the Laws, the polity of Plato's Laws is based on this principle that the inherited lot cannot be alienated. That's a grave crime. This sacredness of the inherited estate is the most wise institution possible. Of course -- that is implied by Plato -- it is not possible always to have that best practical polity and then this law would have to be changed. But from no point of view can there be any question that Jezebel acted most unjustly and not merely illegally. May I illustrate this by a funny story in a well known comedy, Arsenic and Old Lace. You remember -- most of you will have seen it -- these are two old ladies who kill old bachelors in order to make them happy and they do this with the best conscience and then their nephew comes in, observes this, is quite shocked, and then he tells them, quite surprised that these nice ladies could do such a thing, what you do is wrong. It's not only against the law. You know, this is meant by the distinction between unjust and illegal. Well, so there is no question from any sensible point of view that Jezebel acted unjustly and here there is then a principle of natural right involved. But what is the difficulty? Our certainty as to the justice or the injustice of this case depends decisively on the fact that it is a well defined case. Given all these circumstances no sensible or moderately honest man can doubt that Jezebel acted unjustly. Stated more generally, what is by nature right results in the individual cases rather than in the general rules. Justice means to assign to each what is good for him. Now if Naboth had been -- the same legal rights but he had been an old bachelor who had used his vineyards for all kinds of excesses including disfiguring the and the king would have made a beautiful park we all would say -- the action of Jezebel is impossible but then Ahab's demand and perhaps even some proceedings against Naboth would have looked very different. One also would have to raise the question, of course, regarding the original title: that in this state of affairs where fundamentally all property owners have the same title, whether as king or commoner, the action of Ahab or his wife is perfectly impossible. But what about the original justice of the title? Conquest probably. Does conquest give a perfectly clear title? No, of course not mere conquest, without going into the details of the case, but there is something like prescription or time out of mind. This estate belonged to this family and that to that. But this principle of prescription is a very complicated principle. It is practically inevitable, but is it so clearly right that at a certain time one simply stops raising the question of justice. It is a convenience without which human life is impossible, but can one say that this is simply just? That's a very great question. From Plato's point of view no law or rule of any kind can be simply just because of its very universality and generality. There will always be exceptions and therefore -- there are rules of justice which are for all practical

purposes the rules of justice, but not unqualifiedly. There will always be exceptions. This much about the Platonic doctrine of natural right. Now I would like now to turn to Aristotle, but if there is any point which anyone would like to raise now regarding Plato in particular that's the moment. Yes?

Q: (Inaudible).

S: Yes. The Republic is, from one point of view, truly the model of a just order as Plato sees it because the rulers decide all cases on their merits. I mean, there are surely certain very general rules. For example, this kind of people belong to the moneymaking class; these belong to the warriors, and these belong to the philosophers. Yes, but who belongs to what? These decisions, where to draw the line: that can only be done by men of the greatest competence. No one possesses any property, but he gets what is good for him and the city to possess and so on. Now surely this is not possible. This I think is the clear message of the Republic, it's not possible. But because it is not possible all justice which is possible is imperfect and that means in Plato's language all justice which we have is shot through with convention. We never get the pure natural right. We have rules of thumb which are good for most purposes, but none of it universally. Take such a rule like not stealing. Everyone admits that there are extreme cases: when someone stealthily takes away from another man what he absolutely needs in order not to die it is not unjust. And some qualification of one kind or another always arises. And I think one does not misstate the Platonic view if one says the clearest cases, where you can definitely say that is so, are the well defined individual cases like the case of Naboth which I read. In other words, the universal rules are not truly universal. They are always subject to exceptions. But the well defined case may very well permit of one and only one decision and is to that extent -- the decision is unequivocal in a way which the universal rule is not. Is this an answer to your question? Yes, Mr. Boyan?

Q2: In what does Plato sit down and diagnose and define the exceptions?

S: Yes. You mean to say, if we have certain -- say, a sum total of rules of justice -- say, a finite number, of course -- and then if there are exceptions there must be a single principle of regulating the exception. Yes? That's what you mean. No, I mean if one looks at your question, there must be then two sets of principles: one, those generally valid, and then the principle regulating the exceptions. Is this not clear? Must you not say that? Yes, one can give one simple answer: the common good. If some decision in a given case -- if the application of the alleged universal rule in a given case obviously is harmful to the community as a whole and to some extent even to individuals then exception. Also considering the gravity of the situation. There are minor inequities where no sensible judge would deviate from the rule, but a big inequity is another matter. Yes?

Q3: You said that in the Republic Plato does not prove what he has been asked to prove, but he adds the concept of philosophic knowledge to this just man in order to -- now, does this indicate to you that Plato cannot come to any conclusive proof without adding the concept of philosophy, that is absolutely necessary for this just man that he be wise and philosophic?

S: Yes, yes, sure, absolutely. There is no question. The same is, by the way, true of the so-called Stoic wise man of whom I have to speak later. The Stoic teaching is so important because that is the first emphatic teaching of

natural law as law. It turns also around the wise man who is a philosopher. That the Stoic view of the philosopher -- well the Stoics were not men of the transcendent genius of Plato and therefore what they say about their wise man reads rather arid compared with what Plato says. That is irrelevant for our present purposes. I'll take that up. Yes, Rabbi Weiss?

Q<sub>4</sub>: What about such a rule as it is better to suffer injustice than to do injustice, which I think is stated in the Crito?

S: Yes, also in the Gorgias. Yes. Yes, but you see that is a rule of such a generality because what does it mean, to do injustice? What are the specifics of it? That one can say, well -- what does it mean in a concrete case? Is -- transgression of a law is, of course, not always unjust. That you would admit, I suppose. Yes? Because that is a case most clearly discussed in the case of Socrates who, as you know, died obeying the laws. But he also makes clear that if -- why he obeys these laws -- these laws are good enough to be obeyed. But if the Athenians would lay down a law forbidding philosophizing, which they legally could, then Socrates would not obey it. This is another matter. Now, but what does it mean, not to harm anyone. In a rough way it is clear. Socrates doesn't steal; he doesn't rob, and so on. That is clear. But can you give me a specific example? Is it not in this sense tautological: that it means justice requires that we act justly? And act justly means not to do wrong to anyone. Therefore, I think it does not in itself help. The thesis says only generally: no man becomes degraded by what he suffers but only by what he does. That's the meaning, whereas Callicles' point is man becomes degraded by what he suffers. If someone boxes Socrates' ears that's an unbearable thing which cannot be tolerated under any condition, to say nothing of having drunk watered poison or so.

Q<sub>4</sub>: (Inaudible).

S: Yes, sure, but what is Socrates' whole explanation of that? What does he say? It was an illegal action. Just as in the trial of the generals after the battle of the the people, indignant, wanted to condemn and execute these nine generals in one sitting, and that was against the law. Only one case of this kind could be handled. And Socrates, who was in charge at the time, refused to deviate from the law and became very unpopular because of that. But his point was he acted -- he upheld the law, the positive law of Athens. Surely the reason why he did that is because he regarded this as a sensible law. If it had been a stupid law I don't know what he would have done: whether he would have been so punctilious in complying with the law. You see -- yes, these are all -- I mean, for example, such a specific law that -- I mean, the famous cautions which men have established in different ways at different times for preventing judicial murders and all this kind of thing are sensible laws, but no one would say that they are natural laws. They are based on some natural law principle, of course, which means simply that the purpose of penal justice is to punish the guilty, not the innocent. That's obvious. You know? You can also say that. In a way that's a very substantive principle but it is also of such a universality that you have to define what are punishable actions, to give the meaning. How far are they defined by nature? And then if they are defined to some extent like, say, property, theft, robbery and so on, are these prohibitions in the most general way universally valid? That's the difficulty. Yes?

Q<sub>5</sub>: In the Apology Socrates says that the only reason that he'd like the Athenians to save his life is that it would be bad for Athens if they kill him. So I wonder --



S: I didn't remember the first part of your statement.

Q5: The only reason he might be pleading to Athens to spare him is that. . . . (several inaudible words) so that I wondered, if it's worse to do injustice than to suffer it doesn't the just man -- it's kind of silly, but doesn't the just man act unjustly by permitting others to feel unjustly? Doesn't he have a responsibility?

S: Yes. Very well. I think the Crito, well understood, is a beautiful example of the Socratic-Platonic view of justice. Yes, but there are various principles involved. The other principle is, of course, should one disobey the law if one derives private benefit from such disobedience? Yes? Now externally viewed, Socrates' action would be to elude a law or even to transgress a law -- namely, not to escape from prison after you have been legally condemned, for strictly private reasons, because he wants to save his life. And he has to balance these considerations. But this is exactly the point. The balancing of these considerations shows the fundamental difficulty: that none of these rules is universally valid. Socrates seems to say in the Crito, one must obey the law, the positive law, under all circumstances and regardless of what the positive law says. And that is not true. I mean, it is crudely presented that way because for the purpose at hand that's sufficient.

Q6: I'm having some trouble understanding justice . . . on nature. If the state is by nature it seems unjust or at least partially unjust. I gather that the state can't be just if wisdom doesn't coincide with strength.

S: Yes, now strictly speaking, in Plato's view. Of course. Yes.

Q6: And this would seem to indicate to me that by nature the community must be at least partially unjust, and if that is so how is it that justice can be founded on nature?

S: Well, it would only mean -- I see your point. In a way, that is what I have been trying to explain both at the beginning of today's class and last time. It concerns the fact that the -- I mean, if the polis is a fundamentally problematic thing, meaning on the one hand it is undoubtedly necessary and on the other hand it has essential limitations and it deviates, in a way -- it is in one sense according to nature and in another sense against nature -- then the justice you can have in a polis can only be of a questionable character, limited character. I mean, all the many people who have rebelled against war and alien and sedition acts and all this kind of things were somehow prompted by such a feeling; you know, that the state is in this sense inhuman. Plato admits that, but Plato, being thoroughly unsentimental, says this is absolutely necessary. Without these institutions like war, capital punishment and so on, the situation of men would be still worse, and there is something questionable there. Now, by the way, the theoretical -- I mean, the merely theoretical proof of the fact that this was Plato's view is very simple. Nothing is strictly speaking just, according to Plato, except the idea of justice itself. So not even the individual in the highest case can be perfectly just, but still less the city. In the Republic in 427 -- that must be toward the end of the fourth book -- there Socrates says to Glaucon, now let us look at the polis (which they have founded). Where in it will be found justice and injustice? There is some injustice. Well, I gave this example: how can you really make a fully just decision that "x" should become a blacksmith and "y" should become a warrior? I mean, then at a certain point you have to toss coins and that means to do something which is no

longer rationally defensible except on grounds which are not fair to the individuals, which are fair enough to the city. That is another way of stating it. These two considerations of justice, what is good for the community as a whole and what is good for each individual -- these two considerations are heterogeneous and there will be cases where the two considerations collide and that would show an essential limitation of justice. Mr. Boyan.

Q7: (Inaudible).

S: Well, there is no comparison between the good protected by the law, property, and the good here endangered by it, life. That's the simple reason. Yes? That's simple. But surely -- I mean, these -- how shall one say -- these deviations can of course not be arbitrary. That's impossible. Then it would be clearly unjust: an arbitrary deviation. But if it is a rational and sensible deviation then of course it might have a principle and one way of stating the difficulty was the one of which I reminded myself when answering to the lady. The good of the polis and the good of each individual are not in all cases in harmony. He requires the greatest harmony, but you can never get it fully, because of the fact that they are divergent principles which in a rough way agree but not exactly.

Q8: . . . it is not the harmony of the universe that natural justice should indicate that there is and the deficiency of his theory is found in the attempt to extend it into the city where it just cannot be done. That it wouldn't to decree by the very talented gifts that so many men are suitable to the soldiers as such were needed by the state, so many as blacksmiths, so many as whatever you have, so that the king in figuring these things out was in exact harmony with nature --

S: Yes, that is true. I mean, that would be indeed the simplest. But what about, to use the Aristotelian language which is not entirely inappropriate in the case of Plato -- what if matter has a certain recalcitrance to form? Then you cannot do that. Then there will always be complications. I mean, just as we have human beings who are moronic, for example. I mean, which are surely -- cannot be treated as equal from any point of view. It's also a difficulty.

Q8: When the order of the human material and the ideational universe is actually a potential disorder. Isn't it?

S: Yes, now you can put it this way. There is the universe as a whole that has an element of order and an element of disorder.

Q8: How did Plato account for that, Mr. Strauss? Didn't he say something like the Christian says in the that there must have been a Fall?

S: Yes, there is some analagon to the Fall in the eighth book of the -- yes, but -- in the eighth book of the Republic. In the eighth book of the Republic when Socrates raises the question, how could this perfect polity go to pieces, and the answer is -- even -- more closer to the Bible -- to say the woman started it. You know, the wise man's wife begins to complain about what the other women have. And -- good. So it is not identical with the Biblical story, but it has a certain kinship.

Q8: (Inaudible).

S: Yes, yes. No, that was the view, which has often been said, and I believe one can rightly say it is not an insensible view. Both Moses and Plato were thinking and deeply thinking men so it wouldn't be altogether surprising if there would be at least some agreement. But the main point -- what Plato -- perhaps the clearest statement of this is the following. In the Republic it is said if the best polity were established evils would cease from the human race. Evils would cease from the human race. There would be no evil -- let me please finish -- evils would cease completely.

Q8: Under what circumstances?

S: If the philosophers are kings and the kings philosophers. 473. Great statement. But did Plato believe that evils could ever cease? Answer: no. There is the passage in the Theatetus where this is explicitly said. Evils can never cease here. Good. And in the Laws in the tenth book there is a momentary suggestion that there are two world souls, an ordering and a disordering. You can almost say a God and a Devil. That is one way of putting it. I mean, evil belongs to the world. Evil belongs to it and therefore there can never be -- one can never have what is truly and fully natural right. Your question?

Q9: But in Plato you don't have the conflict that you find in, say, Christian theology that Plato's god, even, was limited. . . .

S: Yes, you can put it this way. Yes, yes.

Q9: Whereas in the Christian view you have the view that -- in some aspects of the Christian view, that God is all good and powerful.

S: Yes, that is decisive: the omnipotence of the Biblical God. And there is no omnipotent God in Plato. Yes, sure. That's the point. And therefore Plato in the Timaeus describes the creation of the world -- this creator or god, divine artisan, looks at the ideas, the natural order itself, and with a view -- which is above him -- and with a view to it he makes the universe -- what we can say loosely -- out of a pre-existing matter. Yes, sure. That's the difference. Yes, that's the last question now.

Q10: You said last time that in the classic view the best state would be the possible state too. Now for Plato how much can the best state encompass justice? That is, the most possible state. Does he make any definition?

S: Oh, well, he gives a rather clear answer in the Laws. The Laws are Plato's -- the political book of Plato. I mean, in other words, the book where you read -- where you hear what Plato has to say specifically about political arrangements. The Republic and the Statesman are all theoretical discussions about the nature of political things, not specific proposals, and in the Laws you find it. Sure, it is a kind -- it's not so very different from what Aristotle proposes in the Politics, a republic, aristocratic republic, rule of gentlemen. And a class division; I mean, according to property, four classes. The old -- it was fundamentally the old Solonic Athenian constitution, politically speaking, which Plato transplanted there. Yes, but the principle is the same. I read to you last time this passage about the titles to rule, where the highest title, natural title, wisdom, is qualified by the lower but also natural title of sheer strength. The many unwise must have a say. Otherwise wisdom will never be listened to to any degree. This is roughly the schema. But a right of folly, so to speak, is a strange kind of right for such a radical thinker as Plato is. Yes, when we



have become accustomed to it we do no longer call it that way, but it amounts to that. That's the difficulty: that in every society, in every society, people who are not wise must have a decisive influence even on the understanding of the principles of justice. Therefore the principles of justice which are politically acceptable will always be diluted.

Now let me turn now to the master of those who know, as he was called, to Aristotle. Dante called him that way: the master of those who know. Now the beginning can be made very simply. The question, what is the true dog? The dog who doesn't grow, doesn't bark, doesn't wag his tail, is unchangeably always the same; or this here dog who barks, who runs around, and all this? And Aristotle says, of course, this here dog. That's the true dog. Not that dogness. Dogness is not a dog. Correspondingly, Aristotle answers the question what is true virtue -- what is virtue -- differently from Plato: Plato's answer is, indeed, virtue is knowledge, which needs a long commentary, but this is the answer, and this seems to be as absurd as what Plato says about the true dog: that he shouldn't bark. And how absurd it is you can see, for example, from the presentation which Xenophon gives in his Memorabilia. Piety is knowledge of what is pious and impious. Now it is obvious that a very impious man can have a very detailed knowledge of what is pious and impious. So virtue is doing; not mere knowledge. That one can say in the first place. Or did Plato mean that knowledge necessarily issues in acting on knowledge? But then that knowledge must surely be different from what we ordinarily understand by knowledge: something like faith necessarily issuing in works. Plato understood, we can say, when he meant this, virtue means knowledge, i.e. understanding, comprehensive understanding, understanding of the whole. Yet this is not available. Only quest for it is possible and this quest is called philosophy. Man is not capable of virtue in the full sense; only of striving for it. But the other side: the one thing needful is philosophizing and philosophizing is necessarily preceded and followed by such things as courage, temperance, justice, and so on. Only as by-products of philosophy are they genuine virtues in contra-distinction to the vulgar virtues, the virtues which the non-philosophers may possess. Now let us then come -- let me develop this point further because we must see that point in Aristotle where we can begin to understand.

The highest good is contemplation according to both Plato and Aristotle. Yet Plato calls philosophy striving for phronesis and that is the word for practical wisdom, for prudence. Hence philosophy as Plato understands it is not simply theoretical. Now how does Plato mean this? Philosophy for Plato is the solution to the human problem. Therefore philosophy is animated by eros, by desire for happiness. If philosophy is not understood as such, if it is regarded as a discipline among many -- as they say, doing philosophy -- it is no longer philosophy. Secondly, the objects of philosophy are not indifferent as the objects of the arts are, but they are intrinsically attractive. Let us say, philosophy is passionate concern with things which deserve passionate concern. This, I believe, is an abominably modern statement of what Plato meant.

Plato's view has a remarkable similarity to the religious view. Moral virtue by itself is a leaky vessel. It has no subsistence. And the great difference between Plato and Aristotle in this respect is that he says no, moral virtue is genuine, is genuine, and not a leaky vessel. This comes out most clearly in the passage at the end of the fourth book of the Nicomachean Ethics where Aristotle speaks of sense of shame, which corresponds very roughly, very roughly, to what we would call feeling of sin. There is now a literature in existence, as I have been told, speaking about guilt cultures and shame cultures. Now

guilt and sin are, of course, very much related, and shame: that's something else, you know. I address this remark only to those who have read this kind of thing. I cannot go into it, not having read these books. So what does Aristotle mean then -- say then? Sense of shame is a proper thing for young people because they cannot help making mistakes, because of their lack of experience and so. But the well bred gentleman cannot have a sense of shame because he never does anything wrong. He's perfect; perfect gentleman. So the virtue of the perfect gentleman, i.e. moral virtue, is genuine. That means the non-philosophers, because the perfect gentleman is by definition not a philosopher, which doesn't mean that the philosophers are not gentlemen . . . (about five inaudible words) -- the non-philosophers are capable of genuine virtue and in moral virtue the cognitive element, meaning knowing what you should do, while being indispensable is, of course, less important than the practical element, actual choice.

Now I cannot now go into the question, how Aristotle understands the relation of moral virtue and nature, which is, of course, of crucial importance. The moral virtues have a natural basis. They are perfections of natural faculties, but perfections achieved, of course, as according to Plato, by training and habituation. The point which I have to mention is this. When you read Aristotle's Ethics, especially Books II to V where he discusses the various virtues, fundamentally he enumerates them. He does not deduce them. Plato deduces the virtues. You see, we have, say, three parts of the soul, reason, spiritedness, and desire, and there is a virtue corresponding to each and so we know that there are -- we know by deduction that there are and can be no more, no less, than these virtues; a deduction. Aristotle enumerates them. What happened later was that the Stoics took over the Platonic doctrine of the four so-called cardinal virtues, wisdom, courage, temperance, and justice, and therefore implying the deduction involved in that, and that was then taken over by the Christian tradition, especially by Thomas Aquinas where you will find something like a deduction. But not in Aristotle himself.

Aristotle seems to proceed as follows. Well, everyone admits there is a variety of virtues. Let us make a list of them. What do you think of? And then asking, did I omit anything? Looking around, no. It's complete. That's good enough. That is induction in the original sense; uncontested experience. Wherever you look you find nothing more. Deduction is not necessary.

Now the second difference between Plato and Aristotle which is essential is, of course, that the city is natural, the thesis developed at some length at the beginning of the Politics. What does that mean? In the first place, it is not an artifact, naturally. It is not an artifact. It is by nature. Of course it is made by men. Men have to establish it, but in establishing it they only follow the guidelines of nature. Men. . . .

(Change of tape).

. . . points to the polis as that association which is sufficient and adequate for the actualization of men's potentialities. The city is a community neither too large nor too small for the actualization of men's potentialities. A village would be too small. It would be a mere accident if all potentialities of men could be developed there. Well, think, did you want to have both good training in music and in mathematics and also in astronomy and other things? It is not likely that you get competent men in each village so you must have a larger group, a city, a town. But on the other hand a town can be so big that it becomes unwieldy. You know, that all kinds of terrible things can happen because there is no longer possible a supervision of the individual citizens by each

other and by the magistrates. One can say the polis is natural because it is commensurate with man's natural power of knowing and of caring; the natural power. For example, what we see through microscope and telescope is not simply our natural power. We are armed with artifacts. Now what we know of, say, President Kennedy or Khrushchev or whoever it may be through newspapers and television: that's also not natural power and obviously in this case there are special reasons why this doesn't permit of true knowledge of any individual because this is all staged. That is a special reason. But what we can know by our own observation living with this man in question, and also caring. Men cannot care for the whole human race. There is a limit to that. This is an Aristotelian meaning of the polis is natural, in contra-distinction to Plato where the polis is fundamentally conventional, as is indicated most clearly in the story, the so-called noble lie, to which I have referred before. Some arbitrary line is drawn between a part of the human race and the rest. The strongest statement, perhaps, occurs in Plato's dialogue, the *Statesman*, where the distinction between Greeks and barbarians and not between Athenians and Thebans or Spartans is compared to the distinction between the number 10,000 and all other numbers. Just as arbitrary as it is to divide all numbers into two classes, one consisting of the number 10,000 and the other of all other numbers, as arbitrary it is to say these are the Greeks and these are the barbarians. The number 10,000 was, I believe, chosen because there were at that time 10,000 famous Greeks who went into the heart of Asia Minor.

Aristotle, of course, does not mean -- Plato in the context, by the way, makes clear what he means by a natural distinction. Natural distinction is that distinction of the human race into males and females, not into Greeks and barbarians. Aristotle does, of course, not mean that there are no relations of justice except those among fellow citizens. There are relations of justice among all -- every human being and every other human being because they are human beings. As he puts it in the *Ethics* somewhere -- you might read that passage, 1161b, 1 to 8, one cannot be a friend of a slave as slave, but one can, of course, be a friend of a slave as human being. And there are relations of justice between every human being and every other human being. Connected with the assertion of the natural character of the polis is the assertion of the natural character of private property in the criticism of Plato in the second book of the *Politics*. Plato had said only the body is by nature private, one's own, and Aristotle makes clear that the extension beyond the body, of houses, fields, and what have you, is natural to man and man could not live a life which is not altogether unbearable if he did not have private property. Private property, to make this quite clear, does not mean, of course, the same -- what is now called free enterprise. Free enterprise means the freedom of infinite acquisition. Aristotle does not recognize that right. What Aristotle has in mind is the property, say the family property -- the most simple case, the estate, the landed estate which one has inherited from one's fathers and grandfathers, must not be interfered with. But that the polis is, of course, perfectly able to -- and it is necessary for it -- to establish limits beyond which no one may own property, was no question for him. This is one of the greatest changes in the history of natural right: that from a certain moment on the natural right of property came to mean the natural right of acquisition. And this is, of course -- well, you know *The Federalist*, No. 10. I forgot now the exact formulation. How does Madison say? The protection of the unequal powers of acquiring property is the function of the state. The key individual in this development is Locke. I will take this up later.

From all this it follows that the natural right as Aristotle understands it can be identical with what is ordinarily understood by right or just. Ordinarily meaning by non-philosophers. And so Aristotle can speak -- Aristotle uses



this example of prohibition against stealing, murder, adultery and so on, as a matter of course. But we must now turn to Aristotle's explicit teaching on natural right and this we find chiefly in two Aristotelian writings. The one is the Rhetoric and the other is the Nichomachean Ethics. (Now I will write this here.) A word about the name: Nichomachus was the name of Aristotle's son and why the book is called after his son I don't know and I believe no one knows, but surely not because Nichomachus wrote it. He may have copied it for all I know. But this is the ethics. There are two other ethics transmitted as Aristotelian. It is not necessary to discuss that now. The ethics is called the Nichomachean Ethics.

So in the Rhetoric first: now what do we learn from the Rhetoric? The Rhetoric is, of course, a work devoted to the art of persuasion, rhetoric. (Writes it on blackboard making following remark regarding the laughter: No, no, so-called factual knowledge should never be expected. That can always easily be said. And if I don't know it one can easily look it up in any of the many dictionaries. That's easy. The main thing are the ideas, if I may say so, not the words.) Now the Rhetoric has -- contains Aristotle's doctrine of how to speak well before law courts, in political assemblies, and also maybe for the purpose of showing off. That was also a kind of rhetoric, rhetoric, where a man, you know, just for -- where no practical purpose was involved and only just showing one's cleverness. Now Aristotle makes here a distinction in the first place -- that is the first remark about that -- a distinction between the written law of the polis and the unwritten or universal law, meaning not only for the polis but for man as man. This is developed most specifically at the beginning of the thirteenth chapter of the first book. I will read it to you.

I call nomos, law; the one is /literally translated, private, but let me say/ particular; the other universal. Particular is the one, those established by each people in reference to themselves, which again are divided into written and unwritten. By common or general I mean those which are according to nature.

The common law, law common to all men, is the natural law.

For there is, as all men divine, a right and wrong common according to nature, even if there is no community among the men nor any contract.

In order to have a private, a particular law, law of the polis, there must be some agreement. They simply have to take a vote. They have to take a vote: this will be the law. There is, however, something right by nature and hence a natural law, which does not presuppose any contract whatever. And then he gives examples from Sophocles, Empedocles, and Alcidas. These examples are merely meant to show that there is an agreement as to the fact of natural right. They are not examples of what Aristotle regards as natural right, as you can easily see from the fact that Alcidas thought that by nature all men are free and no one a slave, which flatly contradicts Aristotle's teaching, as we will see. Good.

Now -- and then in the sequel, in the same chapter, he makes a distinction roughly as follows. There are two kinds of right: namely, written and unwritten, and of the unwritten right there are two kinds again; first, the noble things. Now the noble things mean here the things which are beyond the call of duty. May I make this remark? What we call moral today, now and for many centuries, is in Greek, in the classic Greek, the just and the noble things. Just things are not the noble things but they are, of course, akin. But strictly understood they

are different. The just corresponds roughly to what we regard as duty and the noble things are things which are praiseworthy, going beyond that. What would be an example? Pay one's debts is just, but no one is praised for paying one's debts, unless in very special circumstances, when it requires an immense effort to pay them. To be in jail because you have committed a crime is just, but no one would say it is noble to be in jail. Yes? This one must always keep in mind if one wants to understand these things. So the unwritten is in the first place the noble things and secondly the equitable, the equitable. In this context Aristotle does not speak of natural law nor even of a common law. And in a later passage, in chapter 14, again in the first book of the Rhetoric, unwritten laws are characterized by the fact that they are not compulsory, they are not enforceable by their very nature. Now this obviously cannot refer to equity because equitable decisions can be enforced, but it refers to the noble things. Now take the simplest case: gratitude. To be grateful is noble, but in the moment you become obliged to be grateful, if you are not nice -- if you do not pay visits to your benefactor at least once in a quarter of the year then you will go to jail, then obviously it ceases to be -- it becomes a legal obligation and ceases to have -- to be noble and praiseworthy simply. (Let me finish -- I'll give you the word as soon as possible. I will only finish that).

The last important passage occurs in the fifteenth chapter of the first book of the Rhetoric and let us see what he says.

First we have to speak about laws: how to use them when exhorting or dissuading, accusing or defending. /This is, of course, the rhetorical question. He's teaching orators, speakers/. For it is evident, if the written law is counter to our case we must have recourse to the universal law and equity, as more in accordance with justice. And we must argue that when the juror takes an oath to decide to the best of his judgment he means that he will not abide rigorously by the written laws, that equity is ever constant and never changes, even as the universal law, and further, that justice is true and expedient but not that which only appears just.

And so on. And also, of course, the following consequence: that if the written law speaks for us and the unwritten law against us then we will say, you know, that you ought to go by the written law because the unwritten law is much too vague and unspecific. So what becomes clear is that this is really a rhetorical topic. Natural law is, as it were, a common assumption granted by everyone in the law court and not more in this particular connection. The unchangeable natural law has this character. This much about the Rhetoric. And now you wanted to say something.

Q: . . . the city is not natural but just by agreement. . . . that the polis is natural because it is co-extensive with the human powers, it would seem. . .

S: It is co-extensive with what? Yes. Yes, but that doesn't mean, of course that the laws of the polis -- at least, that all laws of the polis --

Q: But the particular law -- but the fact that the political community is natural --

S: Yes. Yes, but there are all kinds of questions; for example, the polis is natural but the polis always has a political form, a regime. It is democratic, oligarchic, monarchic or what have you. Is this difference of regimes irrelevant regarding the naturalness of the city? May there not be regimes which

make the natural city a sick city and others which make it healthy? And the laws depend very much on that. We come to that. I merely wanted to give you the absolutely necessary evidence in the Aristotelian texts. Yes?

Q2: In what way, then, is Aristotle's idea of natural law by nature, if it is not a pattern writ up in the sky, as Plato, but merely a defenseless (?) type of idea.

S: My answer is this. On the basis of the Rhetoric you cannot give any answer because he merely makes the assertion that there is such a thing and the examples which he gives are all of them not Aristotelian examples. What I wanted to show is only the occurrence of the term natural law in Aristotle in the Rhetoric. That is so important because in Plato, as I pointed out at the beginning, the term natural law never occurs, with these two exceptions I mentioned: one in the Timaeus when natural law is the law of fluids in the body, which has nothing to do with our issue, and Callicles speaks of a law of nature and Callicles means by it the law of the stronger. That's also not the thing which we seek. So -- and Aristotle does speak of a natural law in the Rhetoric. But the Rhetoric, one must never forget, is a book, a manual teaching men to be good speakers and then, of course, he has to know the items, the topoi, the topics which are used as a matter of course in law courts, in political assemblies and so on. And one of them is the unwritten law in a variety of meanings. In one it means equity. In another it means also something -- a law which all men recognize, which is by nature. It doesn't contain an assertion that this endoxon (?), this generally accepted view, is strictly speaking true.

In order to establish what Aristotle thought about natural law himself we must turn to his Ethics above all. Now I must say again, Aristotle does not speak -- I must say as I said in the case of Plato -- Aristotle does not speak of natural law, but of natural right, and the reason, one can say, is this: Aristotle's Ethics is, above all, a doctrine of virtues. Now the virtues -- there are, roughly, eleven of them -- they are of a great variety. There is a principle of order, one principle of order particularly important. One can say virtue in the Aristotelian sense has two peaks, two virtues which embrace all other virtues. One is called magnanimity and one is called justice. Now magnanimity means -- what one can say -- noble pride. It means demanding great honors for oneself while deserving them. If someone demands great honors for himself while not deserving them he is an absurd boaster. If someone wants for himself no great honors and not deserving them then he is a sensible fellow. But if he demands great honors for himself deserving them then he is magnanimous. Now magnanimity is the comprehensive virtue from the point of view of the perfection of the individual in himself. A man who has all virtues, who possesses all virtues to the highest possible degree, of course must be conscious of the fact. Otherwise he would be a fool. I mean, I try to re-state in a somewhat slangy manner what Aristotle in his dignified language says. So he must be conscious of his worth; and if he is conscious of his worth he also wants it to be recognized because it is good for the others too if they recognize it. It's good for the polis if they recognize it. But it is primarily the perfection of the individual.

Justice is the all-comprehensive virtue from the point of view of the polis. Justice: that is what Aristotle calls general virtue, general justice, justice understood as comprising all virtues. Now the proof which Aristotle gives that there is such a general virtue is that he looks at the most common view of law, of justice: the just is the legal. The just is what the law



prescribes. Now the law prescribes not merely actions of justice in the narrow sense, not to steal, not to forge checks, but also not to run away in the army -- from the army -- courage. It also forbids certain forms of intemperance and so on and so on. So these are the two peaks of Aristotle's Ethics and the virtues which they comprise somehow overlap. Now if you consider the fact that some of the virtues are -- for example, urbanity, you know, nice graceful conduct in society, gracefulness. Now this is obviously not something which the law can prescribe -- be witty in society -- and therefore there is a certain impropriety in understanding the virtues as Aristotle understands them as commanded by law. Some of them, yes. Also, perhaps the most important ones. But not all. This is a simple explanation of the fact that Aristotle's doctrine of the virtues is not explicitly connected with a doctrine of natural law.

But of natural right Aristotle has, indeed, to say quite a few things. But nevertheless, apparently very little. Apparently there is only a single page of the Ethics which deals with natural right and this is in the fifth book, 1134b18 to 1135a5, and to this passage I will now turn. Given the fact that time moves while we move I will not be able to finish the discussion of the passage, but on the other hand we have time, at least, to begin it. Now it begins as follows. "Of political right some is natural and the other is legal." Legal means here, of course, established by positive law, convention. Political right: let us try to interpret that. Political right obtains among those among whom there is by nature law; political right in distinction to other right. And these are among free and equal men, among fellow citizens. Political right is the right which obtains among fellow citizens; where no one belongs to the other as in different ways slaves belong to the master, children belong to their parents, and a wife belongs to her husband. Take a very simple case: if a father takes away money of one of his children he cannot be said to commit theft, robbery, or whatever it may be. And the case of a slave and husband is slightly different, but fundamentally it's the same. Society of free and equals where no one can as such give commands to the others except if specially authorized by law. The father can give commands to his children without special authorization; the masters to their slaves, and in a way the husband to the wife too, according to the older view. Good. But a citizen can't give commands to any fellow citizen unless he is elected magistrate; by virtue of that but not as such. This sphere of the adult male fellow citizens, to make it quite clear, is the sphere of the greatest density of right as right. With a complete stranger -- say, if you take someone, I don't say in mainland China, that is too complicated, but in Formosa whom you never have heard of, you have no relation (?) of right whatever. But if you meet him somewhere in the subway or in any other place there is a certain relation of right; I mean, you cannot hurt him in any way -- that goes without saying -- not insult him and so. That is clear. But there is very little: you have almost nothing in common with him. The relation of right is very thin. With your fellow citizens, especially if you take it in the whole sense, with polis, these 20,000 men at the most who live together, they have the maximum in common, as independently they have much more in common, you can say, with their wives and children. But these are not relations of right, properly understood. It becomes only when something goes very wrong, when he beats his wife and children so much that he has to be dragged before a law court, but in most other relations the question of right does not arise.

Now this political right is, then, here under discussion; and to repeat, when Aristotle says natural right is a subdivision of political right he doesn't mean that there is no natural right among people who are not fellow citizens; but somehow he is more interested in political right because political right,

as I say, is the sphere of the greatest density of right as right. He said shortly before in the Ethics, "We seek both what is absolutely or unqualifiedly right and the political right." This means, according to Thomas Aquinas, the absolutely or unqualifiedly right is identical with the political right. I do not know whether that is the last word about it, but that is surely a defensible interpretation. Right pure and simple, right without qualification, is a right obtaining among fellow citizens.

Now in a sense, of course, all right is political, as Aristotle makes clear at the beginning of the Politics, because ultimately every decision -- what has to be done and must be done -- every authoritative decision must be made by some duly established authority. Good. Now let us proceed and take the next passage. "Natural right is that right which has everywhere the same power and not through its pleasing or not. Legal is that right regarding which it makes no difference to begin with whether this way or that way, but when they have settled it, it does make a difference. For example, that the ransom for a prisoner should be one mina /a coin/ or to sacrifice a goat but not two sheep. Furthermore, what they legislate regarding individual things like to bring sacrifice to Brasidas, and what has the character of a decree." Now here Aristotle explains more fully what he means in a sense by natural right. Natural is that right which has everywhere the same power. Aristotle says everywhere in all these cases and not always, although he means, of course, also always, for this reason -- that is, I think, the only explanation of which I can think -- what obtains everywhere is in principle knowable by any man by looking with his own eyes. Especially today but to some extent also in former times you can travel. You can go to Persia; you can go to Syria; you can go to Northern Africa, to Thrace, and see all of that. Whereas what was in the past you cannot know in this direct way. You have to depend on reports. So natural right: that which has everywhere the same power and not through its pleasing or not. Now pleasing is an inadequate translation. When a law is passed the formula is it pleased the people, it pleased the demos. It pleased. Now positive right is right only by the fact that it has pleased the people of this or that city. Legal is that right regarding which it makes no difference to begin with whether this way or that way. For example, simplest case: right driving, left driving. There's nothing unjust with driving right or with driving left, as the British show, very righteous people, but once it is established it does make a difference. Aristotle's examples here: the ransom for a prisoner should be one mina. Obviously positive.

Now let us see -- this example -- what can we learn from this example? -- because after all it is not sufficient for us -- sufficient to tell us that there is a natural right which obtains everywhere, but we want to have at least some specimens of it. Now to ransom prisoners: for one mina, positive. To ransom prisoners: is this an example of natural right? Perhaps we have to speak more generally. To help one's fellow citizens from misfortunes into which they fell while performing a civic duty. That would seem to be intrinsically just. The other example: two goats or one sheep, or whatever the example. To worship the gods by sacrifices, or if this is too detailed, to worship the gods. This is natural right; and I'm sure this is what Aristotle means. Well, the next passage requires a somewhat lengthier discussion and since there is someone who has a question I can, anyway, make a stop here.

Q: (As to the correctness of McKeon's translation).

S: Yes. If I'm not utterly mistaken -- I mean for the sake of sheer exactness -- the translation is not by Mr. McKeon but by Mr. Jowett. Ross -- I'm sorry --

Ross -- very good blunder. Good. And Mr. McKeon edited. So you must not blame my colleague. Where are we now? Yes, in the fifth book, let me see, 1134. Yes, well the chapter divisions differ from edition -- in this, seven -- yes, the best thing is to count from the marginal numbers, 1134-118 following. Now where is your difficulty.

Q: Well, the difficulty is that where you said right it says here justice. That's political justice.

S: Yes. Yes, sure. I elaborated this translation advisedly because I wished to keep away everything which is not necessary because this passage is difficult enough. Now the translator is, of course, a very intelligent man. He tries to make it more intelligible, i.e. he presents it as much as possible according to present day usage, but what is gained in immediate intelligibility is lost in true understanding. You know? So there is, of course, nothing of a rule of justice. Something right is much more -- is the literal translation, and -- by the way, never forget this thing, you shouldn't be set back by the word justice. I stated this before, this simple wisdom from the first lesson in Latin, that what in English is called right is in Latin justum, the just. I believe it is easier to say of political right part is natural, part is legal, than of the politically just. But here I may be wrong and if you think if I would say justice better than right I'm willing to make that change. I thought only right was a bit more idiomatic in this connection than just.

Q: (To the effect of whether different Greek words are used for the English right and justice).

S: No, no, no, no. Same word all the time, and that I brought out -- tried to bring out in my translation.

Q<sub>2</sub>: (Pursuing further the problem of translating from the Greek).

S: Yes, that is not so simple. The ordinary word for the virtue of justice is dikeosyne. Now dike is, of course, the original, the root. Yes? Right, and the goddess of right. Surely you can say. But it also can take on this narrower meaning; that's the difficulty, namely, of punishment. Dike didona, to give right, literally translated, means to undergo punishment. And dikayon is the adjective which means, literally translated into Latin, justum. Justum: the just one, the just thing. We cannot use the adjectives as easily as the Greeks do. Therefore I said right instead of the just. Yes. Mr. Butterworth.

Q<sub>3</sub>: Speaking about this question about language, there's something you mentioned earlier about the difference between natural right and natural law. . . .

S: No, that is -- I don't know. The term natural law, nomos as physis, is, of course, a term occurring in Greek writers. But it occurs in Plato and Aristotle with very great rarity and the term physidikayon -- in English, natural right, is more common and much more fully developed. The Greek equivalent of the term natural law becomes very powerful and central after Aristotle in the Stoic teaching. I will speak of that later.

Q<sub>3</sub>: But in the sense of nomos as being the law there?

S: Yes, sure, nomos as physis. Sure. Otherwise I wouldn't translate it that way. Sure. So I mean -- one can say, and as has been said so often and as I



believe is said in most textbooks, that the origin of the natural law tradition has to be sought in Stoicism. In a literal sense it is correct: natural law but not natural right. That is much older.

Q<sub>3</sub>: But does this opposition create some tension. . . .

S: Yes, it surely compels us to raise the question, why suddenly this emphasis on natural law in the Stoic philosophy whereas no such emphasis in Plato and Aristotle. Surely that must be raised. The usual answer given is that's all Alexander the Great, which is -- you know, the polis ceased to be the form of organization, and that empire of Alexander which foreshadowed the Roman empire and that is a universal society comprising all men and no longer merely the small segment which was assembled in a polis and therefore you needed a universal law. This has no basis I believe. Yes?

Q<sub>4</sub>: (To the effect of whether or not natural right for Aristotle includes worshipping the gods as implied in Ethics, V: 1134b22, the passage which was read.)

S: Yes, I believe that is the most natural understanding here because to sacrifice a goat and not two sheep or vice versa, this is obviously positive right. But what is here which could conceivably be not positive? What is here of a more general nature? You can only say sacrifice to the gods. If this is too specific then you say to worship the gods. And this is not entirely far fetched because in a discussion which deals with this theme, although not under this name, namely Xenophon's Memorabilia, Book IV, chapter iv, worshipping the gods is mentioned in the first place and there is also later evidence for that. So that is, I think, a defensible assertion. I don't say that it can be proved from this passage here, but it is the most natural. At any rate one thing you must admit. When Aristotle devotes a single page explicitly to the question of natural right in these terms we must insist on getting some light on what specific provisions of natural right are. We have two here. One is very specific: that about helping one's fellow citizens and especially if they have incurred misfortune while engaged in service for the city. I think no one can seriously doubt that this is not more than fair. And worshipping the gods too. And these are the only clear examples which come. The passage is one of the most difficult pages surely in the Ethics, but not inferior to other famous difficult passages in the other works. Next time I will complete that and try to reach some conclusion of this first page (?).

... contra-distinction to law, as I did hitherto, and then right or rights as used in contra-distinction to duties. The latter will become very important when we turn to modern natural right, but for the time being let me say only this. The distinction between rights and duties which is so obvious to us was not always so obvious, and I will illustrate it by a statement of Aristotle which is to this effect: what the law does not command it forbids -- in contrast to, say, Hobbes: what the law does not command it permits. Now the latter we easily understand but the former is difficult. How can this be? For example, the law doesn't command -- does it? -- that we should breathe or that we shall take food, and so on, and hence we are forbidden to breathe. Now this is not true, of course, because the law forbids, for example, committing suicide. The law also commands that one becomes a soldier under certain conditions, and other public duties which one cannot possibly fulfill if one is not alive. So, in other words, the right to breathe is here tacitly understood as derivative from a duty and one can say that this is the way in which ancient law understood men. When Socrates says in his Apology -- Apology of Socrates by Plato -- I am "just" in making my speech of defense, justus in Latin, what does that mean here? Does it mean Socrates is entitled to make a speech of defense or he is under an obligation to make a defense? I think it is prudent to say we cannot say, but if one can make a guess I would say the primary meaning is he is obliged to do so. The distinction of right and duty, the hard and fast distinction as we know it, is a derivative one which arises in certain cases with a certain necessity but which is not primary. Let us never forget that this word which -- in English it is hard to say because -- you will see from my examples why it is so hard to bring it out in English, but it is only implied in English in this clarity. Now the word which I translate right is the Latin jus and corresponding Greek words. Now what does that mean? For example, jus helvetiorum (?). That is the law of the Helvetians, the law of the Helvetians, or of any other tribe or nation. Then there can be a jus matrimonii, a right of marriage. What does it mean? It's a law regulating marriage. There can be jus regis, a law regarding the king, the law. Now here, of course, we see -- there is here a distinction which must come up sooner or later. The law tells the king or, for that matter, the president what he must do. It also tells him certain things which he may do. Now what he must do are his duties. What he may do, we can say, are his rights. But that this distinction should become central and as important as it seems for us: that is by no means certain and surely it is a later development. We cannot presuppose this here at the beginning.

Here we are concerned only with the distinction between right and law in the sense of what is just, what is just, and whether this what is just is understood as somehow based on a law. It has nothing to do with the distinction between duties and rights. Did I make this sufficiently clear? One of you had some difficulties last time and came to me at the end of the class. I do not know whether I succeeded in making it clear. Mr. Butterworth.

Q: (Inaudible).

S: Yes, well in the later -- I mean, when these things were discussed in the late Middle Ages or early modern times then, of course, it was simply said, jus has a variety of meanings and one meaning is the same as lex, and the other meaning is what they then came to call a facultas (?) for something, where the simplest example is, of course, property or any dominion. Say the father has dominion over his children. The property owner has -- yes? And all these kind

of things were called dominion in the widest sense. This was the right. In German -- I do not know whether they do it also in French and in Italian -- they make a distinction between right in the subjective sense and right in the objective sense. Now right in the objective sense is a body of law and right in the subjective sense is the right which a man or a body of men has or have. The right which has you, if I may say so: that is right in the objective sense or law. The right which you have: subjective right. Now this distinction was developed surely already -- for example, the Romans speak of a right to use and to misuse property. It's of course a subjective right, but the question is whether this is made explicit, this distinction, or not. And it was made explicit to some extent in the later Middle Ages, early modern times, but still not so clearly that Hobbes did not have some right to say jus and lex, right and law, are radically different, and they are generally confused. And he made this clear-cut distinction that right means simply the subjective right, the right a man has, and lex means the body of law or the obligations. So this is a very long story. But when I speak in this Greek context of right in contra-distinction to law I do not mean at all this modern, this later distinction. This I only had to make clear. The key point is only that there is -- when you speak of right or just there is not evidently a reference to law, whereas when you speak of law of course the reference is there. We will later on see what it means. For the time being we must limit ourselves to saying that neither in Plato nor in Aristotle is there a teaching of natural law, whereas there is clearly a teaching of natural right and we must later on try to understand that. Yes?

Q<sub>2</sub>: Would you say, then, that the usage of law and right in Greek times -- the Greek words for law and right are radically opposed, whereas --

S: Not opposed.

Q<sub>2</sub>: (Continued inaudibly).

S: You can say that. That makes sense. In other words, perhaps more precisely, the natural law teaching stems from the Stoics and not from Plato and Aristotle. Yes? Good. But needless to say there are elements in Plato and Aristotle; you saw in Aristotle's Rhetoric, for example, the reference to it, but it is not developed, especially not in the Ethics where he clearly presents his own teaching.

The other point which I wanted to make with a view to an earlier discussion is this. I said the issue is primarily, is there something by nature right or is all right conventional? Now the view that all right is conventional I called conventionalism, and the reason given was roughly this, still as today. Look at the variety of institutions and of notions of right in different peoples and at different times. This infinite variety seems to show that there is nothing natural in right; for if there were anything by nature just it would be universally valid, universally recognized. But this argument is not very -- not powerful, as is admitted by the very conventionalists. When you read the argument in Plato's Gorgias, for example, or in the second book of the Republic you see that the same people who say all right is conventional say also right has a core of meaning which is unchanged in time or in place. I mean, to quote a much later writer but who only restates the view of the older thinkers, namely Rousseau, "is there some country on earth where it is a crime to keep faith, to be gentle, beneficent, generous, where the good man is despicable and the perfidious one is honored?" It makes some sense, and perhaps there must be some trivial qualifi-



cation but essentially it is correct. So there is a core of the meaning of justice which is really generally recognized. Rank injustice is nowhere publicly defensible. It is defensible when it is disguised, on the basis of lies or myths regarding facts, but in itself it is not publicly defensible and to that extent the anti-conventional view is correct but also the intelligent conventionalists admit that. What, then, is the issue? The issue concerns exclusively the status of that right which is universally recognized. Is that right merely the conditions of living together, of political society as a closed, particular society, or does it constitute a right independent of political society, a right between man and man? Because if it is a right binding only the members of a society then one can rightly say it is exactly like that justice which Al Capone admitted. I mean, he surely preferred the more able of his companions to the less able and there were certain truths which they observed in sharing their loot. In other words, there are certain crude rules of division, of distribution, and of exchange, which are admitted in every society whether it is a gang of robbers or a political society. But this gang of robbers obviously is very unjust. They do not act justly toward the outsiders. Now one could say, is not a political society also such a society which is relatively decent among its members but doesn't regard itself as bound toward any other human beings? If this were so then one could rightly say justice owes its validity only to a precoding contract or agreement. Then justice is radically conventional, although the meaning of justice is not conventional. That has fundamentally one and the same meaning everywhere, but is its validity not ultimately conventional? That is the other point -- that is the decisive point.

Differently stated, the conventionalists deny and their opponents assert that justice is choiceworthy for its own sake -- whereas the conventionalists say no, it is only a necessary thing, necessary evil or necessary good: that does not make any great difference. In other words, the case for justice is simply a case of calculation. I figure out that it is, on the whole, safer to be just. Nothing drives us toward justice spontaneously. There is no natural inclination toward justice. It is based only on calculation. This is fundamentally the issue of natural right as it was discussed in classical antiquity.

Now I will now return to the passage in Aristotle's Ethics where he speaks explicitly about natural right; and I have interpreted the beginning, that natural right is introduced here as a part of political right, but that doesn't mean that there is no natural right outside of political right. It means only that natural right has its greatest density or fullness among fellow citizens. Natural right is that right which has everywhere the same power and not through being accepted or not. And we have seen some examples of natural right as Aristotle understands it. For example, ransom prisoners: that would mean, as a formula of natural right, to help one's fellow citizens, especially from misfortunes into which they fell while performing a civic duty. And, to worship the gods by sacrifices or, more generally, to worship the gods, is also valid by natural right because we see it everywhere.

He continues as follows (and I read now again -- that is b24, following). "Some hold that all right is such like i.e. legal since what is by nature is unchangeable and has everywhere the same power (as fire, a natural agent, burns both here and among the Persians), but the just things they see being changed. This is not so, but in a manner it is so. Indeed, with the gods it is perhaps in no way so. With us, however, there is something right also by nature. But all right is changeable. Nevertheless, some of it is by nature and the other not by nature. Which of the things susceptible of being different is natural and which is not, but legal and by agreement, although both are changeable

equally, is manifest." One of the most immanifest sentences one could imagine. Now let us see what he means by that: Now how is it manifest? If both natural right and legal right are changeable, nevertheless part of it is natural and part of it is legal. Now let us first see. All natural right is changeable: what does this mean? For example, if we stick to the example in my opinion implied, sometimes it is not just to bring sacrifices. I mean, not only that they are not obliged to do but that it might - that it might be just blatantly unjust. Well, we can easily see when. There could be emergency situations: during a siege or so. And there could also be situations in which it is not just to ransom prisoners. But Aristotle indicates somewhere in the second book, there are still things like adultery, theft, homicide, which are always bad, so the question never arises as it arises regarding eating and drinking and other morally neutral things, when, where, how much. You cannot say how much is moral when you cannot deliberate as to how much you would steal and when and where. They are always bad; and here Aristotle seems to deny that there are any things which are always bad.

Now when, then, to repeat, is what is by nature just -- say, sacrificing to the gods -- properly changed so that the change is no less naturally just than the unchanged? In spite of the fact that both the natural and the legal just are equally changeable it is manifest which changeable just or right is natural and which is not natural. I think we only have to look back. Then we understand this sentence. Namely, the natural is that which is everywhere in force regardless of its changeability or not, and the legal is that which changes from people to people, from city to city. We must come to this assertion -- we must come back to that later. I continue now.

"The same distinction /namely, between natural and legal/ will hold of the other things for by nature the right hand is stronger and yet all men can become ambidexterous." Now let us see what light this comparison throws on the question of natural right. Natural right is compared here with the fact that by nature the right hand is stronger and yet this is changeable. When a man becomes ambidexterous both hands are equally strong. In other words, the natural right can be changed by human art -- that would seem to be the parallel -- and can thus be improved. I think Aristotle means that ambidexterity is preferable to non-ambidexterity. But in this case, of course, the right thus changed or improved is no longer quite natural, just as ambidexterity is not quite natural but is brought about by art. Now this seems to refer to the change which is effected by the addition of legal right to natural right. And such additions take place all the time. Take a very general proposition, sacrificing to the gods is of no great help if you don't know to which god and at what times and what places. So this is a change of natural law, the addition to it, but of course presupposes it and does not abolish it.

If we think this through we might reach this conclusion: that the natural right is a minimum recognized everywhere but the law everywhere adds to it. But is this what Aristotle means? Does he not mean that after the change of the natural right, of what is called narrowly natural right, right is still natural. In other words -- otherwise there wouldn't be any change; you could not call it, strictly speaking, a change of natural right if something is added to it, if it is made more specific by legal right. This seems to be a difficulty which we will take up later. Now I go first on and finish this passage.

"Right according to convention and to expediency is similar to measures /measures and weights/ for corn and wine measures are not equal everywhere but where they buy those things, i.e. in the wholesale market, they are larger, and

where they sell them, in retail, they are smaller." The nature of the case requires measures everywhere, but this is wholly ineffective if the specific measures are not established and they are established by convention; and they naturally differ from place to place, but, by the way, not entirely arbitrarily, as Aristotle indicates, because some good reason, expediency, determines which measures you adopt for which problem.

"Similarly also that right which is not natural but human, i.e. of human origin, is not the same everywhere since not even the regimes are the same everywhere." Legal right necessarily differs because all laws depend on the regimes and the regimes differ in many ways. I mean, there is not only one kind of democracy; there are four, five, or maybe more kinds. This implies that the natural right does not depend on the regimes but obtains everywhere. It seems to confirm the view that it is -- stipulates the minimum requirement of social life. So all legal right depends on the regime. There is a democratic right; there is an oligarchic right; there is an aristocratic right, and so on. And Aristotle develops this at great length in his Politics. But here we have to raise this question: are all regimes equal in regard to justice? That they are equal in regard to goodness is another matter perhaps. Each regime has its notion of right, but these notions, like the democratic right, the oligarchic right and so on, are distinguished by Aristotle from what is emphatically right, supremely right. For example, the democratic right says, according to this crude distinction, all men should be treated as equal in every respect, or all citizens really. The oligarchs say no, there should be different treatment of different citizens with a view to their wealth. The wealthier people should have greater rights than the poor ones. And Aristotle says both are wrong because the only reasonable criterion of distinction among citizens is virtue or merit and not wealth or any other consideration of this kind. Preference is to be given to men of excellence and ultimately to the man of supreme excellence and wisdom. This is right. In a word, the best regime is -- the most divine regime, as Aristotle put it -- is kingship of a certain kind, of the man who deserves to be king. This is by nature the best regime and hence everywhere where a true king is available it is the just regime. But when he is available of course it is just to obey him. This is what Aristotle understands by what is simply right, which is not identical with the political right. The political right obtains among free and equal fellow citizens, but if there is a case of such a superiority the political right does not obtain. And this simply right is most natural because no artificial things of any kind are required. Wherever you have a group, a body of men ruling, you need artificial requirements, obviously. I mean, who should do what? Who should do what, and even the majority vote is, of course, not simply a natural right institution although some people have said it is. This most divine regime is above the law. This true king is above the political right which obtains among equals because the others are his subjects, as it were his children, and therefore they do not have that independence of one another which is essential for political right, right obtaining among fellow citizens. Aristotle goes so far as to say that this man is -- he is the whole. He is the whole and the common good is not something outside of him to which he has to be subjected.

In these extreme statements which are of very little or no practical importance, of course, but which are very important for the theoretical orientation -- in these points Aristotle agrees with Plato. So, in other words, this puts a big question mark behind the political right and also the natural right implied. But -- and here we come back to what we can call reality -- in contradistinction to Plato, Aristotle admits also a natural right which is, as we may say, a minimum and not that maximum. This corresponds to the fact that he



admits; in contra-distinction to Plato, that there is a self-subsistent moral virtue, which also comes closer to political reality. Aristotle's explicit teaching regarding natural right merely serves the purpose to show that there is natural right despite the fact that it is changeable. It is not meant to make clear the content of natural right. The explicit discussion of natural right follows on the preceding discussion of that content. And now what is that content?

First, justice means in the first place law abidingness and justice as law abidingness is, in a way, the whole virtue of man insofar as it is directed toward another man, insofar as it is social; for the law commands the actions of all or most virtues. For example, courage: not to run away in battle; temperance: not to commit adultery; gentleness: not to beat up or to insult. Justice understood as law abidingness naturally presupposes law, i.e. positive law, but it can come into its own only when the laws are good because otherwise the law abidingness is still something respectable but it is not -- is also somewhat questionable. And this, that the laws are good, depends at least partly on their compliance with justice. Now what is that justice in the narrower sense where justice is understood as one virtue among many?

Now Aristotle gives the following example to make clear that we must make a distinction between justice in the general sense, i.e. law abidingness, and justice in a more particular sense. A man who commits adultery out of desire is unjust as breaking the law and intemperate as prompted by desire, but if he commits that act not out of desire but for the sake of money -- I suppose because that woman pays him -- he is not intemperate but unjust. In other words, he doesn't lack self-control; he is only anxious to get money and this is injustice in the narrower sense, in the special sense. Special justice, in a word, is concerned with gain regarding money and other things; with having more than others. The man who lacks self-control, for example, does not as such wish to have more than others. He only wishes to have what he likes. But injustice is having more than others and therefore justice in this narrower sense means to have what belongs to one and not more. And according to Aristotle this justice in the narrower sense consists of two kinds which he calls distributive, on the one hand, and corrective or commutative on the other. Now the corrective or commutative justice consists in itself of two parts: regarding voluntary transactions and regarding involuntary transactions. Now the voluntary transactions are such things like buying, selling, borrowing, and hiring; and the involuntary ones are crimes because your relation to the man who steals from you is an involuntary relation on your part, obviously.

Now regarding these two kinds of justice, regarding buying and selling and so on and regarding crimes, the principle of equality prevails, of arithmetic equality. And this means simply that there must be, in a way, a strict equality between the things exchanged, in the case of buying and selling. For example, you are a shoemaker and the other man is a house builder and you exchange. Prior to the invention of money you would have to give him the exact equivalent in shoes of the house he builds to you. After we have invented money that's simpler: you pay in money for the worth. The implication, of course, is that there is something like a just price, and a just price which is not determined by the market -- that would be merely mechanical -- but by the value of the things, the intrinsic value: the labor involved and the value of the raw materials. The just wages would also come in here in some way, in this notion, which were, as you probably know, abolished in the seventeenth century and modern economics is based fundamentally on the principle that there is no such thing as an intrinsic just price and an intrinsic just wage. The just is simply

what the market will bring about: the resultant at which the transaction may take place. Arithmetic equality means one does not have to consider the persons. For example, murder. It is absolutely irrelevant in commutative justice or corrective justice strictly understood what kind of man committed the murder, meaning whether he is a noble man or a commoner or whether he has great merits or no merits. The simple fact of murder must find its proper equivalent. And this implies also that there are certain fundamental rules of justice, of course, regarding the severity or non-severity of punishments: what one may call natural penal right. I mean, that one cannot ordinarily punish a small theft in the way in which one can punish murder and some other things of this kind, which no one in his senses questions, is of course part of this notion of right which is then definitely natural right.

The same is true of the other kind, which is distributive, and where the person, the ratio between the individuals involved, has to be considered. In other words, where you do not have simple so-called arithmetic equality but proportionate equality. Especially, the most important case is, of course, the political partnership, the political association, in its distribution of honors. It cannot distribute of honors with arithmetic equality but in proportion to merits. An image or shadow of it is, of course, also to be found in some partnerships for gain where the division of the booty, or rather of the gain, is made in proportion to what each brought into the partnership. One can say this is a kind of image of the true distributive equality, which is that--the distribution of honors in the community.

I'll say another word about another kind or subdivision of justice in Aristotle. That is equity. Now for Aristotle equity is, at least in the Ethics as distinguished from the Rhetoric -- equity is not in itself a part of natural right, but strictly a correction of legal right. In other words, the concern of equity is what did the legislator, the originator of the positive law, intend? And this question arises necessarily because of the essential defectiveness of all law. The legislator cannot possibly foresee all circumstances, all cases, which may arise. For example, the legislator forbids to take vehicles into a public park, but are toy automobiles or bicycles public vehicles? I found this in a law journal, the examples; I believe it is good. So but to repeat, in equity as understood in the Ethics natural right is not involved but only an understanding of the original intention of the legislator, so in order to apply what he would have decided if he were here regarding this particular case. So this much as a rough summary of the Aristotelian teaching of natural right. I have to take up the most difficult question concerning the changeability of natural right later. This should be separated from the general point, general discussion. Now is there anything you would like to take up at this point? Yes?

Q: Do you mean to say that the commutative is the narrower sense of justice and the distributive the broader?

S: No. One could rather say that the more noble form of justice is, of course, distributive. No, no. But both are -- Aristotle starts from this fact: that looking around he sees all the time when people speak about justice they mean something like an equality. But there is this strange thing: but not simply equal. For example, as that this and this has a value of five dollars and the bill for five dollars. It is not always so. Sometimes some men get more than others justly and therefore it is necessary to distinguish between two kinds of justice: one where the just is simply equal -- for example, in punishments the punishment should fit the crime and Aristotle means it -- primarily it should be exactly the same harm should be inflicted. Well, an eye for an

eye, not in the form of depriving the other fellow of his eye but he should give the damaged man the equivalent in money or in other things of the damage which the damaged man has incurred. So he shouldn't give more, and, say, if the damaged man is -- whoever he may be, a man of the greatest merit or a good-for-nothing, that wouldn't make any difference. But in other cases whether he is a man of merit or not makes a very great difference. For example, if it is a question of appointments.

Q: What I didn't follow is you said something earlier about a distinction of Aristotle between narrow and broad justice. Could you clarify that?

S: Oh yes. Oh, that is -- yes. Well, general justice is the same as law abidingness. The just man is he who obeys the law, meaning he does not rely on his force or on his guile but he does what the law commands him to do. That is the most simple. But this is too general because -- as Aristotle shows by those examples -- that example which I think, which is very good, the adulterer is of course unjust in the sense that he breaks the law. But then he is not unjust in another sense. He is not unjust in the sense in which the cheat -- you know, say in business -- is unjust because he is not concerned with gain, with getting more money or whatever it may be. So, in other words, we mean by justice (a) general social virtue, but (b) also a virtue which has to do with such things as money, as possessions, and even as honors. It is a different consideration. This is justice in the narrower sense. Yes? And justice in the narrower sense is then divided into commutative and distributive justice. Is this clear?

Q: Yes.

S: And you can say there is another division or another appendage to justice in the narrower sense and that's equity. Yes? Good. Those are the most important distinctions. You first -- yes.

Q2: (To the effect of whether Aristotle's sanctioning of the relationship between master and slave makes a mockery of the relationship between man and man, if in actual practice one man is a slave and another is a master).

S: Well, I do not believe that it is a mockery but I regret to say that no good example occurs to me. But let us look at it -- take a special case. A man has a slave of remarkable decency and intelligence. That's happened; Epictetus was a slave. And then, of course, they might be good friends, and of course there would never be -- the master would have the greatest regard for the human dignity of the slave and of everything else. But if it comes to a matter of property, for example, the slave has no property. The master assigns him a room or whatever it may be -- or some place where he sleeps. The master can change this any time he sees fit. He doesn't have to pay him any wages. These legal relations remain wholly untouched by the human relation. Is this not a possibility.

Q2: Yes, it's a possibility --

S: Yes. Yes, now one must -- you see, well, we have fortunately not that institution and therefore we have no experience. We would have to take other examples where two men as the same human beings have relations on two different levels: say, as friends and then also, say, as partners in a firm. You know, what connects them as friends does not necessarily affect every business transaction they make. Is this not thinkable? I mean, I think that is -- well, Aristotle never speaks without having specific points in mind. You see, these



are never mere constructs. Even those things which seem to be entirely abstruse as that about the perfect king, of which he admits in another place that this is not something which is in fact possible -- he has something very specific in mind which, indeed, would have to be rephrased completely so that you can recognize the fact, the manifest fact which he has in mind. Now, but you started with another thing. For example, the relations between two people who are not fellow citizens: say two people meet in high mountains, both complete strangers. Number "A" doesn't like the face of "B." Can he kill him, insult him, and whatever he wants? Aristotle says of course not. There is a relation of justice even among the complete strangers. Now if they would exchange there -- I mean, one has, say, an umbrella and the other has overshoes, or whatever you like -- yes? -- and they want to exchange it. They have a good reason for doing so. Well, of course it goes without saying they can act honestly on that occasion or dishonestly, whether they are fellow citizens exchanging on the market or both complete strangers in the wilderness. Does it not make sense? So relations of justice obtain among everywhere. But Aristotle says, and quite reasonably, that the people who always live together have, of course, many more relations of justice than people who meet once on a trip; obviously. And they have common responsibilities; these fellow citizens, which complete strangers do not have. So that, I think, makes sense. There was someone else -- were you? Yes. Mr. Boyan.

Q<sub>3</sub>: Yes. I'm sorry; I just don't -- I'm still not clear as to the distinction -- the first distinction . . . when you talked about the adulterer. It seems to me that that distinction isn't clear because I don't see where you couldn't have a society where this sort of thing was not violating a general social virtue, a political society. What would happen? I don't understand.

S: Yes, well, then you raise a different question. If polygamy is an established institution then the man who has "n" wives does not commit adultery if he has relations with one of these "n" wives.

Q<sub>3</sub>: (As to whether Aristotle would regard as an aberration some society in Asia to which the questioner refers).

S: Yes -- no, he would say it's a very defective society because what kind of troubles -- I mean, they can also -- infinite troubles and confusions will arise if no one knows who his children are -- yes? -- for instance. And other things. But Aristotle would, indeed, take for granted monogamy.

Q<sub>3</sub>: Oh, he would. /S: Yes./ Well, then there's of course the problem that -- his definition of what's natural as core (?). This core doesn't seem to be a very consistent core --

S: Oh, I see. Well, this is already my interpretation; I mean, one possible interpretation. And I would say even there one can -- there is -- well, in one way or the other people have some property. Even if all means of production are socialized each one has still his loaf of bread. Yes? So. So theft and robbery and other things are possible there; murder obviously because no communism can ever take away a man's body from him and still keep him. That's impossible. So -- good. But the same can apply, of course, also to women. Even if there are only what I hear is called a Wednesday steady. A girl can take away a Wednesday steady from the other girl so even here there would be justice and injustice. Something of this kind would always be there. You know, a simple -- the question is, is there anywhere -- I mean, I address this to the trained

anthropologist -- unqualified promiscuity? I ask. I have never heard of such a case. In that case, of course, this difficulty couldn't -- this situation would never arise. But Aristotle never doubted that there could be all kinds of unreasonable human arrangements. That is another matter. But he would say -- the effectiveness of natural right, he would say, would show in the fact that in such a society which doesn't provide for these bare minimums of civilized life will be complete impossibility of a full development of man; and this, I believe, would be hard to refute even on the basis of anthropological evidence because these things occur all in so-called primitive societies. Yes?

Q<sub>4</sub>: (Referring to Aristotle's doctrine of the changeability of natural right.)

S: No, no, no, no. I will take this question up, the question of mutability or changeability of natural right as Aristotle means it, later. He would surely say that this changeability would be the same everywhere, i.e. if certain deviations from what is ordinarily regarded as just in itself are just then they are just everywhere whenever the specific conditions are given. I will take -- I suggest we keep this -- this is the most difficult passage. Now for Plato it is so: the unchangeability of the idea of justice requires the changeability of anything related to justice which is not the idea of justice itself. No man, no city, no law, is perfectly just. Hence, its changeability is in principle necessary because it is of imperfect justice. Whether it is in fact possible is another matter. That's an entirely different question. For Plato all right apart from the idea of justice itself is changeable. Namely, think of this -- take the Republic quite literally. The right institution is the rule of philosophers but if there is no possibility of establishing it, is this wrong? Of course not. And then you have another institution inferior which is the just thing under the circumstances, but it is of imperfect justice because not everyone will get what is good for him as distinguished from what the law assigns to him. That's a different question. Yes?

Q<sub>5</sub>: (To the effect that in Plato wisdom is qualified by consent: diluted natural right. Is the Aristotelian kingship, then, also diluted natural right?)

S: No, no. Very good that you bring that up. Aristotle's natural right is apparently in no need of being diluted. I mean, for example, if there is a fair exchange in the sale or in the barter what is there to be diluted? The question of whether the one who gets the umbrella would be better off if he would get wet is irrelevant. For Plato, strictly understood, it is relevant because everyone should get what is good for him. Do you see that? By cutting off this consideration from the consideration of justice proper Aristotle arrives at a right which is not essentially in need of being diluted. Aristotle is much closer to what we ordinarily understand by justice.

Q<sub>5</sub>: Is this what he means by its changeable --

S: No, no, because this in itself wouldn't -- why should it be changed?

Q<sub>5</sub>: Well, I was thinking that you have principles of right but you want to make decisions out of them and all that changes is the circumstances.

S: Yes, that is in a way true, but I believe one can state it more precisely and I will take that up separately. Yes?

Q<sub>6</sub>: (To the effect that if justice in the general sense is law abidingness and,

moreover, if it can only come into its own when the laws are good, does it therefore follow that when the laws are bad it is unjust to obey them).

S: No, well that is not so simple and Aristotle makes, in this context, a remark: the legal is somehow the just; somehow -- qualified. The legal is not simply the just because there can be bad laws. The question is -- the practical question, and Aristotle's Ethics is practical from the first to the last page -- is, what follows from that for action? Aristotle has not answered the question, this question, but one must use one's own judgment and well, he has discussed it however in the second book of the Politics where he raises the question whether the change of laws is simply good, meaning of course of bad laws. Well, the connection between the two questions is obvious. Justice is primarily obeying the law, but if the law is bad justice would seem to become something bad. It can become good only if the unjust laws are replaced by just laws. Hence, unjust laws or bad laws should be changed immediately. Aristotle says no, that is a very complicated matter because if the defect of the law is relatively slight, if it creates only relatively minor injustices or hardships, then you have to hold against it the great importance of legal stability, of social stability, which is damaged by frequent changes of laws. So, in other words, the clear thing is you have to obey a law even if it is not altogether just. That there are cases of terrible injustices in which this would not apply Aristotle, by implication, admits. But even here the question is should every man, every citizen, have the right to disobey the law? Should he not rather do his best to get the law changed if it is so preposterous? And the principle is this: every law, however foolish and stupid, is better than the mere rule of the will and whim of men. Every law, because of its generality. The judge who applies an unjust law does not necessarily bring in any passion of his own, but the man who dictates decisions regarding every individual case can bring in his passion in every particular case; to say nothing of the fact that laws are publicly pronounced and a certain sense of decency, of decent respect for the opinion of mankind, prevents even very nasty and unjust legislators from stating in the laws what they would do in their . . . "beautiful example" supplied by the Nazis. I mean, what the Nazis -- the most horrible things they did were not based on any laws, not even on any Nazi laws. They were done simply by executive decrees and. . .

(Change of tape).

. . . the big bad law which the Germans established in Eastern Europe. There was an article on this in the Harvard Law Review some years ago by Professors Fuller and Hart -- on this very general question. And this was very well argued out and a detailed proof on the basis of modern situation, modern experiences, modern concepts, that the rule of laws, even of bad laws, is better than simple lawlessness. And the principle? Law because of its generality contains an element of reason as such. This is not meant as a defense of unjust law. That goes without saying. But only for showing that it is not absurd as to start from this crude notion according to which the just man is the law abiding man although many of the laws by which he abides are of imperfect justice and some may even be downright unjust. But Aristotle doesn't leave it at that. Aristotle makes clear that there is a meaning of justice, a more narrow meaning of justice, which is well definable in his opinion and that is what he says about commutative and distributive justice. There was someone else. Yes.

Q7: (Requests a comparison between Aristotle's position regarding the law and Plato's or Socrates' in the Grito, where he stays in jail).



S: I think there would be no difference. May I make a general remark: that I do not believe that there is any difference in any specific matter, private or public, between men like Plato and Aristotle and Thucydides and Aristophanes and who have you. We are accustomed in modern times -- we think that every philosophic position, every system as we say, leads necessarily to great divergences regarding public and private matters. No, they were all decent nice gentlemen apart from the other things they were. There is no serious disagreement among them. And I would say even if there were some particular disagreement regarding one particular matter: whether it's better that poor girls should marry wealthy men or vice versa -- even if there would be there would not necessarily be a connection between this practical difference and their theoretical principles. There is no difference. Mr. Butterworth -- oh, I'm sorry, you come now.

Q8: On this business of the fact that Aristotle's natural right does not have to be diluted assuming that you have in the community of justice this exchange of shoes for a house and that the house is worth fifteen pairs of shoes --

S: A very small house. Yes, why not? Yes. Yes.

Q8: Assuming that the shoemaker gets the house and the house builder gets the shoes it makes no difference to Aristotle whether the house builder needs all those shoes or the shoemaker needs the house.

S: No. And also not whether the house builder is a man who spends his time, apart from house building, in getting drunk, beating his wife, or whether he is a wonderful husband or not. That's also the point. You know, I mentioned that before. We consider here only the exchange transaction. If he commits fraud in it that's relevant, but if he is honest in that --

Q8: As long as the single act is just --

S: But if they are running for office then one considers them and therefore this is a matter not of commutative but of distributive justice.

Q8: Well even the distributive business: assuming that in the single act of giving the honor the man who was worth three times as much as the other man gets three times as much honor --

S: Yes, but here you have to consider the whole man somehow, at least much more, whereas in the other case you do not consider the man at all. Yes, Mr. Butterworth.

Q8: It would seem that Aristotle was asking a different question than Plato was in talking about justice.

S: In what way?

Q8: Well, in that Plato would be asking what is the essence of justice and Aristotle would be asking much more specific questions.

S: Aristotle asks the same. I mean, Aristotle asks the same. That would not be the difference I don't think. But Aristotle is simply -- just -- well, I gave this example: just as Plato says there is no moral virtue in the Aristotelian sense because there cannot be genuine virtue of anyone except philosophers, for the same reason Aristotle admits a genuine natural right, say commutative

justice, whereas Plato questions that. For Plato, one can say, all natural right -- all actual right has, of course, higher principles but they are diluted -- they must be diluted in order to become politically useful. Do you see that analogy? Because -- take the simple case; let us take this again. Just exchange: the things exchanged are of equal worth or value. Plato raises the other question: is it good for "A" to get the fifteen pairs of shoes? Is it good for "B" to get that house? And which from a very broad -- from the point of view of a physician of the soul. It is, of course, an absolutely necessary consideration. But Aristotle says the statesman or the judge or whoever it may be is not a physician of the soul. He has a much more limited function and this function is sufficiently well defined so that one can speak of what is intrinsically correct or right or not. Plato never -- I mean, Plato was, of course, a man of very great common sense. Let us not fool ourselves about it. I mean, he had -- was perfectly able to sell his olives or whatever his estate produced in order to finance his trip to Sicily and other such things. This is an eminently practical man as you see from this example. But in his philosophic discussions he refuses to stop where we rightly stop for practical purposes. The most beautiful example and most simple example is supplied by the Laches. Did I refer to that in this course? I don't want to bore anyone. Well, here the question arises whether a certain kind of physical training is good or bad and two men who are real experts, say colonels of marine regiments, discuss it: which makes a better marine, this or that? and they don't agree. It happens. And then Socrates is dragged in and he knows very little about this marine business apparently, and he says, however, well, before we can settle that we must first find out what courage is because they are men to be trained for courage. And of course they get into troubles: no one knows precisely what courage is. And the whole practical issue is completely forgotten. Now if you generalize from that: men could never reach any practical decision if they would have to answer all questions of principle first. Yes? That's clear. So Aristotle starts from this fact and he says we must start from crude principles which are sufficiently good for practical purposes. That is what he does in his Ethics. What he says is not so very crude at all, as you would see immediately, but measured by Platonic standards it is very crude. Take this example: why should facing death on the field of battle be more an act of courage than what a physician does in times of plagues and what even a roof layer, a bricklayer, does ordinarily? Why should this be so? Well, facing death with one's eyes open: that constitutes courage and forget about war in particular. Aristotle would say no, I won't forget because when people speak about a brave man they mean primarily the soldier in the majority of cases, and that has good reasons because this kind of courage is much more important to the community than the courageous physician. Do you see? The inexactness, the wise inexactness of Aristotle? That's it.

Q: Doesn't this sort of corroborate what I was saying: that Aristotle is asking more practical questions.

S: Yes, but the practical question cannot be put in the form that Aristotle does not ask what the essence is. Aristotle asks what the essence of courage is as much as Plato but Aristotle is satisfied with answers which are excellent for all practical purposes but which leave certain fundamental things of great theoretical importance undefined. Do you believe Aristotle tells you why he limits himself in discussion of courage to courage on the field of battle? He doesn't tell you. You have to figure out that by yourself. But he talks to sensible people, meaning to people of some practical experience, and they would see immediately that is the courage with which we are primarily interested. That's the way in which he always proceeds. And Plato transcends always this level everywhere and so that one does not -- one sometimes has great difficulty

in recognizing what drives Plato to this height and there is always a very good reason. But this -- I leave it at that.

Q<sub>9</sub>: Wouldn't it be pertinent hereto ask why Aristotle limits himself to this sensible man, crude man's -- while Plato goes on beyond. . . .

S: Yes, but -- yes, yes, sure, that is no difficulty. Yes, the usual answer is, of course, to link it up directly with Plato's transcendent ideas beyond everything sensible and Aristotle's asserting the idea is in the being, or to use the simple example, what is a true dog? The dog who doesn't wag his tail and wasn't born and will not die or is the true dog the fellow who barks here? Surely it is somehow connected with that, but one could, on a Platonic basis, make a strong case -- and there is some Platonic evidence for that -- for saying that surely one must -- there is a certain, a limit beyond one practically never goes, and stop there. I mean, Plato has enough of these common sensical things in him. Yes. No, Mr. Moggi, you were neglected. . . . Mr. Boyan.

Q<sub>10</sub>: You talked a minute ago in answer to another question of Aristotle's idea of disobedience to the law. How would you say that he and Plato differ on that, if at all?

S: I don't think they differ. Well, of course Aristotle never discusses the question whether one may disobey the laws or not. The implication, however, is one should obey the law. That's the same which Plato also says all the time, but nevertheless Plato makes it clear, clearer than Aristotle, that there are cases in which one must not obey the law like that, the single classic example: Socrates refuses to obey a law which in his opinion was then not enforced in Athens that one may not philosophize. So if the people of Athens would say it is a capital crime or even less than capital crime to philosophize Socrates would openly flaunt that law. That he made clear. And you can also imagine some other laws which he would not have obeyed.

Q<sub>10</sub>: But if the law is unjust for Plato, fundamentally unjust, then he makes exceptions.

S: Yes, but that is still -- that won't do. Even if you know that this law is unjust the question whether you can justly disobey it is a different question, obviously. I mean, think of prohibition. Was it so clear that -- even assuming that it was an unjust law, is it so clear that one could openly -- I mean, or secretly for that matter -- transgress it as a just man? It's still a question. Yes? Good. Now I will now turn -- take up this major point, the greatest difficulty, Aristotle saying that all natural right is changeable.

Now this clearly applies to the best regime, to that divine regime called kingship, because it is not always possible, and this means, of course, the changeability: that in most situations, to say the least, it cannot be established although such a man is there. But it applies, of course, also to the minimum conditions, what I call the minimum conditions: the minimum conditions of social life. Thomas Aquinas in his commentary on that passage denies that. He says the principles of changeable things must be unchangeable. Those things which belong to the very essence of justice cannot be changed, and he imputes to Aristotle -- he says Aristotle must have meant it that way. The example which he gives is one may not steal under any circumstances, but the same would apply if we admit the Aristotelian examples. One must worship the gods under all circumstances, whereas how: that depends on positive law. In the Summa, Thomas



discusses it in this form: can the law of nature be changed? And he says again the first principles of natural law are altogether unchangeable but not the conclusions following from the first principles. Look at it in a way as if this were a mathematical argument. Here there are some axioms: they are unchangeable. And then you go down; and the more you go down the more they become changeable -- the conclusions. For example, stealing is simply forbidden but returning deposits, which follows from the sacredness of property, is not always just. For example, if the deposit is a weapon and the owner, the rightful owner of the weapon, is a traitor. In that case it would be unjust to return the gun. But still, Thomas, in the more detailed discussion of theft in his Summa, says to steal because of urgent necessity -- I mean, the alternative being dying -- is not a sin. I think this is what -- that is one part of what Aristotle means. There are extreme situations in which what is by nature right is justly changed. In other words, it is by nature just that the man in the extreme situation steals. It doesn't need positive law for that.

The most striking example of the changeability of natural right in Aristotle would seem to be the following one: what he says about slavery. According to Aristotle only the enslavement of men who are by nature slaves is just. A man is a slave by nature if he is completely unable to live, to act, under his own power, meaning under his own mental power. Let us take a case of a half moronic man. He is best off if he is, throughout his life, in tutelage. You tell him everything he has to do. Say, he is a very strong fellow, and he should be strong, so he can do some hard bodily work which -- he is pretty good for that and that's all he can do. So you tell him to bring five trees from one place to another. He can count to five and you show him: one, two, three, four, five, and this kind of thing. And, of course, you take care of him. He gets his food and gets his place where he can sleep and so on. This is a natural slave. But when he speaks later on, in the seventh book of the Politics, of slavery he says it is important that the slaves should be given the hope of emancipation. Now slaves who can become emancipated are obviously not natural slaves. Slaves, he makes clear in this seventh book, must not be spirited fellows because then it's difficult; you know, they won't obey. Now those coming from the cold regions of Europe are not intelligent but spirited -- so no Thracians and this kind of people; no men from the Balkans. Those from Asia, however -- I think he has primarily in mind the subjects of the Persian Empire -- they are not spirited, they are accustomed to practical slavery anyway as subjects of the Persian king, but they are intelligent. Clearly. But the fact that they are intelligent would seem to show that they are not natural slaves. The slaves who are of any use for a city are not natural slaves and yet Aristotle takes this institution for granted. Now this is clearly a change, a deviation, from natural right. I do not believe that Aristotle would have accepted that if he had regarded this as simply unjust. He would have said that's a change: two principles come into conflict and strictly speaking there should not be anyone a slave who is not a natural slave but on the other hand the city, in order to be a city, in order to have a leisure class, must have slaves and since it is much more important that there are centers of civilization, as they would say today, this higher principle demands a change in the lower principle.

So if we see now, regarding Thomas' point, that there must be clearly a principle which remains unchanged -- and that is, of course, true -- the principle would have then to be said to be the common good. The common good may supersede the principles of natural right in the narrower sense. The polis, as a society which makes possible the full development of man, may do that. In fairness to Aristotle we must say there is, of course, a theological equivalent to what Aristotle in fact does in his Politics and that is a discussion in the

Summa of the cases in which, as Thomas read the Bible, God commanded certain acts of -- say, of theft. For example, the exodus of the Jews from Egypt where the Jews were ordered, or -- yes, were ordered -- to borrow, to loan vessels and so from the Egyptians and this was understood, at least in the Christian tradition, as a commanded theft. Well, and the construction given is then -- well, since God is the true owner of everything when he commands a taking away of something from someone else it is not theft. Well, that is, of course, also something parallel, namely a common good: all men and their rightful ruler. So it is along these lines that I believe we must understand Aristotle.

Full agreement between Thomas and Aristotle cannot in reason be expected. As you see from this example, the only example -- or almost the only example -- to which Aristotle alludes in his explicit discussion of natural right in the Ethics, namely sacrificing to the gods -- generally speaking, divine worship -- is an institute of natural right. When Aristotle speaks in the Politics of the things which are necessary for the city like an army and magistracies and so on he says in the fifth and the first place the care regarding the divine. That's essential to the city. The theoretical basis of that care for the divine is not a philosophic theology, philosophic doctrine of god, but the additions to it of a mythical character which are required for inducing the many to obey the laws, as Aristotle makes clear in the twelfth book of the Metaphysics; a civil theology we may say -- the term coined shortly after Aristotle.

But for Thomas Aquinas these are, of course, false religion and hence compliance with them cannot be a duty of natural right. What then does natural right demand -- natural right demand -- regarding religion? I quote a few passages from Thomas. Somewhere in the Summa he says that reason informed by faith dictates that God must be loved and worshipped. Now if reason informed by faith says it this means not reason by itself. This cannot be a natural law command. Elsewhere he says -- elsewhere he speaks of man's natural inclination to know the truth about God. Now that's another story. This -- to know the truth about God is one thing; worship and love is another thing. In the state of pure nature man loved God above everything else by a natural appetite. But here Thomas again says but the question which is here not answered -- did man in this state know that this was a duty. We hold many things by faith about God which the philosophers could not establish by natural reason. For instance: that God alone must be worshipped, so all worship of creatures is idolatry, the greatest sin. Of course this Aristotle cannot have meant because he was himself an idolator. When he says that religion as reverence for the divine is a virtue he characteristically does not quote Aristotle as an authority but Cicero. He says that the bringing of sacrifices is an institution of natural right as is shown by the universal practice of the thing. But the determination of sacrifices is by human law, not by divine law. According to the true faith, only to the highest God can one bring sacrifices. Natural reason by itself leads only to a false religion. This is a great difference and that has, of course, infinite practical importance, as I will briefly explain; because if this is so then the question arises inevitably: what is the worse thing, a false religion, worship false gods, or no religion? This question became very important in modern times in the seventeenth, eighteenth century, when the whole question of religious toleration became the central theme. In this age a French writer, a Huguenot, Pierre Bayle, wrote a book Diverse Thoughts on a Comet, (gave the French title), in which he made the assertion -- went to the extreme by saying a society of atheists is possible -- possible and preferable to a society of idolators; preferable to a society of idolators. The more moderate solution which prevailed then is: the true religion is the natural religion, which meant -- and that meant, of course, a monotheistic, deistic religion indifferent

to revelation. Now this whole question, of course, one must take into consideration in order to understand the difficulty which arises on the basis of Aristotelian natural right. The whole question of tolerance, the whole question of the first amendment one may say, is linked up with natural right most fundamentally through the religious issue.

That there must be a fundamental difference between Thomas and Aristotle, and therefore the Thomistic interpretation, while being the best available interpretation is not necessarily correct, follows from this simple consideration. Thomas Aquinas assumes that there is a habit, a habitus, of practical principles, of the principles of action. This he calls, with a word no longer used in general language, synderesis (?). We may roughly call it the conscience; the conscience. There is no such thing in Aristotle. The term conscience or its Greek equivalent came into being after Aristotle and even then did not have the meaning which it has acquired in the Christian tradition. Now this synderesis, this conscience, is as it were the storehouse of the highest principles of action. When one raises the question, what is the cognitive status of the principles of action in Aristotle in the Ethics, one comes up against a very great difficulty. No answer really is given there. For Aristotle the view is, I think, roughly this, as appears from another work: the moral syllogism, if one may say so, has this form. This and this is the end of man. I am a man. This and this is my end. Now this and this is the end of man is a theoretical assertion. It is at home in the study of Physics as Aristotle understood it: science of nature as natures. So the basis is -- the principles are theoretical. They become practical by application to individual men in individual circumstances. There is no place for a habitus of practical principles, it seems to me, in Aristotle; and therefore it is perfectly possible that there should also be a difference of view between Aristotle and Thomas regarding natural right. And I think this difference becomes perfectly clear in this statement which is in no way qualified by Aristotle that natural right is changeable: that there is no principle, no proposition of justice, which is true without any qualification. So there is no dilution of natural right, as in Plato, but there is a changeability of natural right. Mr. Gold.

Q: Is that to say that the principles pick up their changeability when they become practical but that it means that there are principles which can be intuited and which are universal in the way that Thomas talked about them, but that in referring them to the individual --

S: Yes, well, how can they become practical except by being acted upon, i.e. by individuals? Let me state it more simply: there is an order of ends which is unchangeable. For example, that the theoretical life is higher than the political life; that the political life is higher than the economic life. That's no question for Aristotle. But the subsumption is another story. I mean, from this it doesn't follow, of course, that everyone should lead the theoretical life. Most men should lead the economic life, so to speak. Yes? Do you see that? The hierarchy of ends, or as they say now, of values: that is unchangeable. But the application is of infinite variety. Now but the more specific point, however, which we are discussing now is not -- does not concern the hierarchy of the ends. It concerns the means to the ends: what a man should do in order to achieve the end for which he is fitted. And here Aristotle says if all natural right is changeable there is absolutely no rule of action which you can establish which is not open to qualifications. And if you think that Aristotle has, of course, also in mind the actions of cities or states and not only those of individuals and the infinite complexity of what is now called foreign relations, you can easily see how a man can arrive at this decision. I mean,



if you take very strictly the Thomistic teaching -- for example, lying is under all circumstances bad -- well, there are some natural allowances made for things which are not really lies: when you sign "your obedient servant" that's of course not a lie -- but any lie. Well, what about war? In war -- then either you say these are not lies but then the question arises, do you not really conceal the difficulty of the issue by saying this case isn't a lie? But all right: war, let us say, is a special case. But then the question comes up immediately: there are just wars and unjust wars, according to the Thomistic teaching. There are just wars and unjust wars. Now it is clear that the individual fellow, soldier, is in no position to decide, to find out, whether the war is just or unjust. You know? He simply will go with his country; must go. But then the other case: how infinitely difficult is it to decide in many cases whether a war is just or unjust. We had this experience -- you in your generation of the second World War where the question was extremely simple. But in the first World War it was not so simply and if you would simply say, well, he who shot the first -- who shot first is the aggressor, this is, of course, a very crude criterion which will not hold water. And war also affects peace. To speak a bit more simply, in peace people prepare themselves for the next war even if it won't come. But still -- the next war will not come if people prevent its coming by being properly armed. So -- and you have, then, such institutions like espionage. Yes? President Eisenhower was so honest -- I believe that was the first case as far as I know, where a governor frankly admitted that his country engages in espionage. Good. But how can you possibly spy without lying, without cheating, without perhaps killing? You know, it is very hard to draw these lines and here difficulties arise. They can even arise in unstable societies in civil wars where one cannot know what decent men blamelessly do surely after a civil war has broken out. Where will you draw the line? So, in other words, there is a certain presupposition of a tolerably normal situation in which these rules can rightly be said to be universally valid. But this condition is not fulfilled in times of armed conflict, international or intra-national, and this of course is by no means an irrelevant consideration. I believe it is a consideration of this kind which affected Aristotle's remark. You see, to repeat, what Aristotle says is that there are cases in which the natural right can be justly changed so that this changed decision -- say, here lying of the man who is spying for his country -- is a just act and not merely an excusable unjust act. That is the point.

Q: What does Aristotle have instead of *synderesis*?

S: There is nothing. There is no habitus of practical principles.

Q: Well, how are the first principles of --

S: They are the end or ends of men and they are themselves theoretical. This is, in a way, admitted by Thomas Aquinas too but he asserts nevertheless that there is a *synderesis* in addition, habitus of practical principles.

Q: But are they empirical principles?

S: No. Of course not. Well, the distinction doesn't exist between empirical and a priori as it is made in modern times, but they are surely not -- they are principles which are universally valid, the highest principles. The good to be pursued; the bad to be avoided. That is the highest.

Q: Well, what's the motive that men have for avoiding them?

S: Reason. I mean, it is as rational as that of theoretical reason.

Q: It's not the same as theoretical reason.

S: No. No. But reason is both theoretical and practical.

Q<sub>2</sub>: Isn't that the question of what he means by the man of practical wisdom?

S: No, the man of practical wisdom -- that is, you mean Aristotle now. Yes, sure, the man of practical wisdom is a man who has much more than these general principles. That wouldn't make him a practical -- no. The man of practical wisdom is the man who is able to make the right decisions by himself. I mean; to the extent to which he needs, is dependent on guidance by others he is not, strictly speaking, prudent.

Q<sub>2</sub>: In the place of *synderesis* would Aristotle have the man of practical wisdom?

S: No, no, no, no. Thomas Aquinas admits, of course, also prudence. Prudence is a virtue which is not -- every man has the habitus of the practical principles whether he is prudent or imprudent, virtuous or wise. But the right use, the right application to specific cases of the principles: that would make a man prudent according to Thomas. Someone else raised his hand. I forgot -- yes?

Q<sub>3</sub>: Well, Aristotle in his Ethics, it seems to me, doesn't discuss things in the syllogistic form. He says at the beginning of the Ethics that ethics is a practical study and that you can't have strict syllogisms.

S: Yes, but that has to do with the status of the maxims, the majors of the syllogisms: what he says there. But he speaks of these practical syllogisms, for example in his book on the soul. Yes. No, no, there is no question. And you can easily -- I mean, after all, do we not reason when speaking about practical matters?

Q<sub>3</sub>: But ultimately for Aristotle it's necessary to base his ethics on a syllogism and that syllogism involving a premise of the natural hierarchy of ends -- if that's so then it rests on some physical --

S: No. Of course not. I mean, that would make it -- make, how shall I say? That this would make ethics or moral action a preserve of philosophers and that is exactly what he does not want to do. No. These people are gentlemen and they know the nobility or splendor or beauty of the virtues. Yes? That they know and on the basis of that they act. But this knowledge of the beauty of the virtues is not sufficient. Well, in the first place, the place of reason is very simple. What is choice for Aristotle? The result of deliberation and if deliberating is not a rational act I don't know what it is. Now how does it come out. You need money; I hope you do not, but some of us need money. You need money and then you deliberate about how to get money and there is an infinite variety of ways but most of them are excluded by decent men a priori because they are indecent. And the crooks, however, are particularly interesting because they are, it seems sometimes, more convenient. Yes? Good. So decency, the awareness of the beauty of the virtues, affects the deliberation by exclusion. That's the first step. Yes? And then you select from the five or four decent ways the most -- the easiest and least cumbersome as a practical best.

That's how we are supposed to act. Well, in many cases we don't have to deliberate so long because earlier experience permits us to abandon the deliberation. We know. Yes? Good. But then it is only a telescoped deliberation, but the deliberation is in. Yes?

Q3: Well, contrary to what I previously thought you said and what I previously thought Aristotle had said you seem now to be arguing that -- to be interpreting Aristotle in a way that the theoretical justification for ethics rests on some view of the cosmos.

S: No! No, no, no. Well, there is something to what you say. I haven't made this sufficiently clear, but I did not mean to say. Let us return to our example. The highest principles we have hitherto seen are, say, the beauty of the various virtues. These are the highest principles beyond which Aristotle doesn't go in the *Ethics*. Now the question arises, if this gentleman is confronted with a very intelligent non-gentleman and who simply says I don't see that beauty. Every positivist today says this in fact; not in words. They don't see it. Prove it to me. And then he says it is hard for him to prove it. It's hard for him. It's obvious. Well, he may try to give some reasons but they are not sufficient. In Platonic language, he cannot prove clearly that the virtues are good. He "knows" that they are good because he has a decent upbringing. On this level you can say the argument is circular. Only gentlemen know truly the principles of gentlemanship. You have to be brought up as a gentleman to know them. That seems to be pure circularity, but it is of course not quite so because the gentlemen see in many cases that the non-gentlemen pay genuine, spontaneous respect to the gentlemen because they see it is really nice to be generous, magnanimous, fair, and so on. Yes? Good. Beyond that we do not go in the *Ethics*. You see, that I said before. Plato deduces the virtues from the nature of the soul. The soul has "n" parts; each part has its specific perfection and this specific perfection is one virtue. Aristotle, as I said -- he looks around and sees what are the virtues to which we refer all the time and let's see. Let's just make a list of them and then see, did we omit anything, and if not, if no one knows of any other virtue which he has mentioned, that seems to be all right. That's Aristotle's seemingly empirical procedure. And therefore the question -- of course, in some cases -- clearly in the case of justice -- Aristotle goes into the question why justice is good, namely that life, human life, is impossible without exchange and people would not exchange things if there were not an overall possibility at least of just exchange. And the same applies, of course, also to distributive justice and so. But in the case of the other virtues he doesn't give this deduction. Well, in some cases it is easy to give. For example, that on the whole temperance, not to overeat and over-drink all the time -- is really very bad for a man but this is not quite sufficient because the question is then also the overall reasonableness cannot mean universal reasonableness. Why not from time to time overeat, over-drink, and then maybe also cheat? That's the question. So that is not a sufficient deduction and the sufficient one would be the link up with the end of man and this leads beyond practical philosophy into theoretical philosophy. This, I believe, is -- and now let us assume the simplest case, the case of the man of the theoretical life, which, according to Aristotle, is the highest. He necessarily -- it is not enough for him to know that he wishes to devote his life to contemplation. Yes? He is a man living in a special situation with these and these men at this and this age and so on. He must deliberate about how he can get the time and the circumstances in which he can study, to use a very simple fact. Yes? Deliberation. Deliberation. And here the question comes in, of course -- yes, but still he would like to study but then he is called into the



army. This is nothing which -- it is a hard fact from his point of view, but he must think about that. He cannot evade it, of course. Why can he not evade it? Then the whole question comes up, if you want to have theoretical clarity, why is this highest end of man not properly fulfillable except within civil society and must not the man of contemplation be also a citizen in order not to destroy that in which he is ultimately most interested, and so on. In other words, whenever you read the Ethics with your private questions in mind then you understand it, but if you read it from the point of view of a purely theoretical discussion about value-free and non-value-free social science then you have great difficulties in understanding. Aristotle has always people in mind -- one can say, he has always people in mind who think, who have some experience and a considerable experience even in solving their private practical questions and who have, however, one other condition. That he takes for granted. They must be settled. It must be a settled thing with them that there is a difference between decency and indecency and that they are men who are absolutely in favor of decency. He does not go out and disprove the principles of indecency, as Plato does. You know, in the Republic, in the Gorgias, and in other places. That he does not do. This is the great strength, and you can also say the great weakness, of Aristotle's Ethics: that he does not give this argument. But you can also see that the theoretical defect is only the other side of a great practical virtue. Yes? Good. Mr. Lyons.

Q<sub>4</sub>: (Inaudible).

S: The necessity of divine sanctions for oaths, for example. Yes, the notion of gods of human character or shape is, as Aristotle says in the first book of the Ethics, an invention by legislators in order to make the many law abiding. The polis is not possible, according to Aristotle, without such a civil religion and since this is so there must be -- since it is so universal for human society as society it is an institution of natural right and not dependent on the opinions of this or that polis or its legislator. What depends on it is whether you should sacrifice a pig to god number "A" and two goats to god number "D": that depends on ultimately -- well, formerly via some religious authorities; you know, but they are ultimately established by the polis. You know, that you go to Delphi to ask there the god what you should do: that is ultimately due to a decision of the polis in the understanding of Aristotle. Yes?

Q<sub>4</sub>: (Inaudible).

S: Well, there are various things. Of course, on the lowest level a consideration of interest. Consideration of interest. I mean, after all, it is inconvenient to live in the wilderness so not to be a citizen, obviously. But on the lowest level. The second point: such things as patriotism, love of the polis. But according to Aristotle these two motives, self-interest and love of the polis, are not sufficient if there is no religious sanction, as we say, added. Therefore there must be such things as sacrifices and prayers. But which? That depends entirely on the human legislator. I mean, of course Aristotle does not say explicitly that sacrificing to the gods is an institution of natural right, but since this example -- the example of the two sheep and the one goat -- is given and as an example of legal right the inference that sacrificing as such is not merely legal right seems to be natural. But he doesn't say it explicitly. Well, so next time we will then turn to the Stoics and Cicero.

Lecture 10: November 7, 1962

We started from the fact that today natural right appears to be primarily a historical issue because schools of thought now prevailing reject natural right. These schools are positivism and historicism and I indicated the difficulties to which these schools are exposed. This creates at least the possibility of considering the issue of natural right as more than merely historical. We then turned however to a historical survey and began from the fact that the concept of natural right emerges only on the basis of the discovery of nature in Greek thought. This discovery implied the distinction and, in a way, the opposition of nature and *nomos* or law, convention. And from this we can understand directly that the notion of natural law was, to begin with, a paradoxy rather than a matter of course. The fundamental and primary question concerned not natural law but what is by nature just or natural right. Now as for that issue I would recommend those of you who are not familiar with it to read the speech of Glaucon at the beginning of the second book of Plato's Republic and the third book of Cicero's Republic. These are the most accessible statements about it.

The first natural right teacher whose writings we have is Plato, but Plato's doctrine of natural right has a paradox of its own. One can state this paradox very simply as follows: natural right must be diluted in order to become politically important. This view of natural right, that it is, as it were, dynamite for civil society in itself, is connected with the denial, the implicit denial by Plato, of moral virtue as distinguished from the virtue of which only philosophers are capable. Aristotle admits a natural right which is in no need of any dilution and that is connected with the fact that he admits that there is moral virtue as genuine virtue in men who are not philosophers. But on the other hand Aristotle also teaches that while natural right is not in need of dilution it is changeable. I would like to illustrate these points briefly by a few things which have occurred to me.

Regarding this question of the changeability of all natural right we discussed briefly the case of theft. Now by some accident I came across another passage from Augustine, which was quoted in an article -- I didn't know it -- in which he discusses the question of adultery. After all, in the case of thefts, lying, even killing, one can always see considerations of the common good which might justify them. Think only of the case of war, to which I referred. But the case of adultery seems to be much more difficult. Now I figured out for myself this possibility which is, of course, not likely in any republican societies, even impossible, but if you think of a monarchy where the death of a king without issue would in all probability lead to a terrible civil war, say like the War of the Roses, and the infertility of that marriage is due to a defect in the king, would a wise counselor of the royal family who would advise a woman to commit an act of adultery to guarantee the peace and safety of the realm be an immoral act? That would be, I think, a case which one would have to consider. Assuming that it has to be done even behind the back of the king because he opposes that, but the common good of the realm depends, according to the best human knowledge, on such a deviation from natural right. Can this not be regarded as a just action? I believe that Aristotle would say it would be. Now the example which I found in Augustine has no reference to the public good or common good, properly speaking. He discusses the case of a wife who agreed to adultery in order to save her husband's life, and Augustine trembles to blame that wife. At least he says there is no divine authority for such a decision. In other words, the case does not occur in the Bible. " " " (cites the Latin) -- "I don't decide in either of the two directions," meaning

either condemning it or regarding it in a laudable action. Now this is, of course, a more general principle and that has very much to do with the question of changeability. What about actions done under duress? Is a man entitled to do anything in order to save his life?

Now the clearest discussion of this question I remember occurs in a Jewish medieval writer, Yehuda Halevi, who asserts that according to the Jewish view in danger of life a man can do everything except three things: blasphemy or apostasy, murder, and unchastity. These are the things which are not permitted under any circumstances, but he adds a remark that this is the difference between revealed religion and the philosophers, that the philosophers do not make any exceptions. In other words, under duress a man may do even one of these three things; and I believe that this is what Aristotle has in mind: that there are always extreme cases where, surely with a view to the common good but even to a man's private good, legitimate deviations from what is ordinary natural right are permissible.

But to come back to the main trend of my argument, in Plato and Aristotle there is surely no teaching regarding natural law in contra-distinction to natural right. Is there any possibility, then, of asserting a natural right which is undiluted and at the same time unchangeable? Perhaps this is the issue of natural law in contra-distinction to natural right of which we have spoken hitherto. But this is only a question. The fact is that the natural law doctrine proper begins with a school which emerged after Aristotle: the Stoic school. Well, as is indicated by the very fact that no proper name is mentioned here, this is a somewhat anonymous affair, meaning the founders and the heroes of this school were not men as outstanding as Plato and Aristotle. Otherwise their names would be remembered. I will not bother you with the names of the founders because it is of no interest to us here. I would like to make only one remark: that Plato was the first founder of a school, strictly understood, and Aristotle the second, and then the Stoics and then contemporary with the Stoic school there emerged the school of Epicurus. Here the name is remembered generally. Now these two post-Aristotelian schools, the Stoic and the Epicurean, have roughly this relation: that the Stoics admit natural right and the Epicureans deny it. The influence of the Epicureans has been very great in their denial of natural right, especially when in the sixteenth, seventeenth century -- when modern natural right began. And such people like Hobbes and Rousseau, for example, all are somehow related to the Epicurean school in particular, but this I will take up later.

Now how do we have to understand the fact that natural law becomes a theme in Stoicism? First of all, what do the Stoics understand by natural law? They say it is the principle of all things: the natural or divine law; the natural law is a divine law. It is the right reason and identical with the reason of Zeus, i.e. the highest god. This law rules everything by prescribing what is right or good and forbidding what is wrong or bad. It is the eternal law. It is the law of the universe and it establishes the community, especially among those beings which are capable of understanding it: that is to say, all men and all gods. The universe is a big city, a cosmopolis, a city -- the cosmos is a polis. The highest god who or whose reason is the natural law is, however, corporeal: fire or noumena or ether and as distinguished from the matter which is coeval with the ordering principle, the god. God is the corporeal soul of the cosmos. The natural law is a cosmic law which assigns to each kind of beings its right way. And an implication of that: there are things which are by nature just. The difference from the Christian teaching is obvious



because, as I will discuss later, no distinction is here made between the natural law and the eternal law, and needless to say, the Christian God is not a corporeal God.

Now how are we to understand the fact that natural law became a central theme in Stoicism and not before? According to a very common view that is simple reflection of social or political life: Alexander the Great destroyed if not the polis at least its significance. These were just enclaves, as it were. The cities were enclaves in the true political society, the empire of Alexander the Great; as people say, the world state. Now if you have a world state you must have a world law and a world law cannot well be of simply human origin and therefore you have this natural law as a law of the world state. But this is hardly tenable as an explanation. The very simple question arises: was Alexander's empire a world state? And any look at a map, even at the map as known at that time, would show you that this was, of course, not a world state. I mean, India, northern Europe, Africa -- I mean, apart from the coastline: that was all out. Of course, not even the Roman empire was a world state, where the same considerations also applied, and if anyone believes that this was the view of serious men, that either Alexander's empire or the Roman empire was a world state, he only has to take the trouble of reading the sixth book of Cicero's Republic, the dream of Scipio where one of the greatest Roman conquerors and generals, the younger Scipio, shows to his Roman friends what a tiny little bit of the Earth is occupied by the Roman empire. This phrase could be used by orators flattering an emperor and this kind of thing but no serious man in a serious speech could ever maintain it. This is to say nothing of the fact that the city as city was, of course, recognized by the Stoics in their political teaching.

The same consideration differently stated: Alexander the Great surely contributed to the breakdown of the distinction between Greeks and barbarians and this could be understood to mean that he established in fact the equality of all men. All men had the same opportunity to rise to any ruling position. But this equality of all men, meaning that the origin, the racial and other origin is of no importance, is of course not the assertion of equality simply because that would mean that all men are in fact equal and not an inequality within each nation or race. And the Stoics have not taught that: that all men are equal simply. In addition, the basic remark that the distinction between Greeks and barbarians is conventional you find, however, clearly stated in Plato's dialogue the Statesman, where the distinction between barbarians and Greeks is compared to a distinction between the number 10,000 and all other numbers: meaning a wholly arbitrary distinction. The natural distinction among the human race which occurs first is that between men and women, as is made clear in the context.

The Stoics do deny that any man can be by nature a slave. But then I ask which philosopher except Aristotle asserted that there are natural slaves? So this is not a peculiarity of the Stoics. But there is a passage which is adduced in the literature in order to show that the Stoics admitted -- the whole Stoic teaching is based on the assertion of the equality of all men. We have some evidence for -- some evidence showing that there were some Greek thinkers who asserted the natural equality of all men. The clearest and most emphatic statement occurs in the fragment of the Sophist, Antiphon, which I read to you some time ago. Now let us first consider this passage for a moment, in Antiphon. How does he prove it? That all men breathe equally and have the need for food and this kind of thing, and hence all men are by nature equal. Now if Antiphon regarded this as a proof of natural equality he must have been a very

poor thinker because this kind of equality, let us say the equality of digestion, is politically absolutely irrelevant. The question is whether men are equal or unequal by nature in regard to those qualities which are politically important and the merely bodily equality in a rough way is, of course, of no political importance. But for given purposes, for certain purposes, it's very important, naturally, and therefore we are not surprised to find that the doctrine of natural equality occurs, for example, in a number of Roman law texts from which it has migrated into the Western tradition in general. But this is one thing, this half popular tradition, and another thing is what philosophers as philosophers teach who are supposed to have given it some thought. And we must see when this doctrine of natural equality comes to the fore in the seventeenth century; we must see what its premises are.

Now we turn to this passage in Cicero's Laws, Book I, paragraph 30. "If bad habits and false beliefs did not twist the weak minds and turn them in whatever direction they are inclined no one would be so like his own self as all men would be like all others." In other words, all unlikeness is due to error, to opinion, to prejudice, and so on. It is not natural. "Therefore, whatever is the definition of man it applies equally to all. This is the sufficient proof that there is no difference in kind between man and man." Now this, of course, was admitted by every man, by every philosopher: that all human beings have the essential character of man. Otherwise they couldn't be called men. "For if there were such differences in kind between man and man one definition could not be applicable to all men. And indeed reason, which alone raises us above the level of the beasts, enables us to draw inferences to prove and disprove; to discuss and solve problems and to come to conclusions is certainly common to us all and though varying in what it learns at least in the capacity to learn it is equal." All men can learn equally although not all men do in fact learn equally. "For the same things are invariably perceived by the senses and those things which stimulate the senses stimulate them in the same way in all men. And so the rudimentary beginnings of intelligence to which I have referred which are imprinted on our minds are imprinted on all men's minds alike and speech, the mind's interpreter, though differing in the choice of words, agrees in the sentiments expressed. In fact, there is no human being of any race who, if he finds a guide, cannot attain to virtue."

Now this is taken to be a statement of men's equality regarding the intellectual capacities. Now I can only make one point: there are so many other passages in Cicero which contradict it. Here I can only say this: that the context shows the following thing. Read it in paragraph 25 there. The same virtue exists in men and God, but in no other genus besides. Virtue however is nothing but nature perfected and developed to its peak. Therefore, there is a likeness between man and God. In other words, on the same ground on which a seeming equality of all men is asserted there is also asserted a seeming equality of men and gods, which Cicero can hardly have meant. There is an identity of the essence but a gradation within the essence. This is the only way, I think, in which we can understand Cicero's teaching. Now if this is then not peculiar to the Stoics, either the rejection of the polis in favor of the world state or egalitarianism of some kind, what is the peculiarity?

Now we must not forget what you cannot know, and so I should have stated it earlier: no writings of the Stoics have come down to us: only fragments. Those Stoics of whom we have writings like Seneca and Marcus Aurelius and Epictetus are much later, much later. Seneca was a teacher of Nero, for example. And -- so we have to remain with (?) fragments. The coherent exposition of the Stoic

ethics, the most accessible, you find in Cicero's book on the ends of good and bad things, De Finibus, Book III. There is no mention there, incidentally, of natural law and the reason, as one can gather from fragments, is this: natural law is for the Stoics the theme not of ethics or politics but of what they called physics, which is the doctrine of the whole and includes also the doctrine of the gods. Now the specific Stoic teaching peculiar to that school is that virtue is the only good. Virtue is sufficient for happiness. The happy life is identical with the life of decency. Now this contradicts first the Epicureans, obviously, because for them the happy life is the pleasant life, but it contradicts also Plato and Aristotle because it asserts that equipment, as Aristotle calls it, meaning some external goods, and some degree of luck, tyche, is necessary for what we ordinarily understand by happiness.

So man is perfectly self-sufficient to make himself happy. But unfortunately there can be terrible fates like the fate of Priam, this decent man whose fate you know from Homer, and where Aristotle himself says I can't give an answer. He, of course, did not cease to be a gentleman and a very virtuous man but one cannot say that his life is a model of happiness. And the Stoics draw this solution: well, if the suffering and the misery is too great you can always commit suicide. So the admission of the legitimacy of suicide is an indispensable element of the Stoic teaching that virtue is self-sufficient. The position described in Cicero's Book III is fundamentally the same as that sketched in Plato's Gorgias without the myth at the end and hence, considering the relation between the Gorgias and the Republic, of which I have spoken before, it is a rather simplistic view.

But what is that Stoic virtue? It is not moral virtue in Aristotle's sense. In the fragments there is no mention of moral virtue as such. Stoic virtue is inseparable from theoretical wisdom. In this respect they agree with Plato. Only the philosopher can be virtuous. On the other hand, and that seems to be the most striking difference from Plato, philosophy is, as it were, demanded from everyone. Philosophy is treated as if it were moral virtue, which can be legitimately demanded from everyone. Moral virtue can and must be understood as commanded to all men, which cannot be said of philosophizing.

Q: How do you say that differs from Plato?

S: That the Stoics present philosophy as, as it were, demanded from all men, whereas Plato says only few men are by nature able and therefore it cannot be universally demanded.

When Aristotle speaks, in the fifth book of the Ethics, of justice and more particularly of what he calls general justice he says that the whole of virtue is, in a way, demanded by the law of the city. Now we can enlarge that and then we arrive at the Stoic view. The highest perfection of man is demanded from all men and this requires a law which is not merely the law of the polis but the law of the cosmos, the natural law. Now this much about the Stoics in general and I would like now to turn to the most important documents of the Stoic natural law teaching which we have in some completeness, and they occur in Cicero, in Cicero's Laws, Book I, and in the Republic, Cicero's Republic, Book III. I begin with the Laws because in the Laws Cicero speaks in his own name whereas in the Republic he does not do so. Cicero's Laws are a sequel to his Republic just as in a way the Platonic Laws are a sequel to Plato's Republic. But Cicero understands it somewhat differently; namely, that every law or body of laws is relative to a regime. Now his Republic presented the best regime, say the Roman, the Roman republic, and the Laws, his book the Laws are



meant to present the best laws, i.e. the Roman laws as fitting the Roman regime. Cicero is the chief speaker and the others are his brother, Clintus, a Stoic; and his friend, Atticus, an Epicurean. Cicero himself is an Academic but he, however, sets forth the Stoic doctrine. Now I explain this briefly. We had these four schools: Plato, Aristotle, Stoa, Epicurus. Plato's school was called the Academy because -- from its location -- just as Aristotle's school was called the Lyceum and the Peripatetic, for some other reason. So -- now the Academy and the Academy had a very complicated fate. It became very shortly after Plato extremely skeptical and the most famous name, which we will hear soon, is Carneides (?) and so an Academician meant in Cicero's time a skeptic, a certain kind of skeptic: meaning Socratic ignorance but interpreted in a peculiar way.

Now the two others will speak about the civil law, the Roman positive law regarding the relations of citizens among themselves and Cicero finds the subject to be of small theoretical interest and he prefers the subject, the best laws, rather than what lawyers in law schools or similar things talk about. One could say jurisprudence in contra-distinction to the law proper. He prefers the subject the best laws along the lines of Plato's work on the Laws and the starting point must be, of course, man's nature and not the rules laid down by the legislator. The starting point must be philosophy. The subject is universal right or universal laws; that is to say, not the right or the laws of a particular society. In this connection I would like to mention briefly another term which has played a great role and is in a way still playing a great role and that is the Roman expression jus gentium. Now the jus gentium, the law of the nations, is distinguished from the jus civile because the jus civile applies only to Roman citizens. For example, if you have a marriage between a Roman citizen and a foreigner that's not an affair of the civil law. And also, of course, commerce, commerce between Romans and non-Romans doesn't fall, cannot possibly fall under the civil law; the jus gentium. But then already in Cicero we find the identification of the jus gentium with the natural law. I mean, originally it was something like a positive law regarding the relations between Roman citizens and foreigners but it could be understood to mean -- it came to mean -- also something like the natural law; and the basis of this identification was obvious because natural right or natural law we have seen from Aristotle; for example, is meant to be a law which is recognized or enforced everywhere, among all the nations. The consent of the nations is a kind of sign or criterion by which one can recognize natural right, according to the older view and therefore it could also come to mean natural law and you find a passage to this effect, for example, in Cicero's Offices, Book III, section 23. Later on, in the seventeenth century, jus gentium came to mean the law of nations in the sense of international law, where the subjects are not individuals but states. This is a very novel thing. Grotius, the famous teacher of international law, still did not call his book Jus Gentium, Law of Nations, but he called it The Right of War and Peace so this is a relatively late development: that we use in English translation the law of nations in the meaning of international law.

Now I must read to you a passage where Cicero speaks about natural law explicitly, which is said to be the basis of all possible law. "The most learned men have thought it good to start from law and it would seem that they are right if, according to their definition, law is the highest reason implanted in nature which commands what ought to be done and forbids the opposite. That same reason, when firmly fixed and fully developed in the human mind, is law. So the belief that law is prudence whose natural function is to command right conduct and forbid wrongdoing. They think that this quality has derived

its name in Greek from the notion of granting to everyone his own -- "well, what he has in mind is this: the Greek word for law is nomos and this can be understood to be derivative from a word, nomein, which means to attribute or to assign. You find this etymology and its use, for example, in Plato's dialogue *Minos*. "For as I have attributed the notion of equity to the word law so we have given it that of selection. So both notions properly belong to law. Now if this is correct, as it seems to be most of the time, then the origin of justice is to be found in law, for law is a power of nature. It is the mind and reason of the prudent man, the standard by which justice and legal justice are measured. But since our whole discussion has to do with the reasoning of the populus it will sometimes be necessary to speak in the popular manner and give the name of law to that which in written form decrees whatever it wishes either by command or by prohibition." The latter remark means that when we speak of laws ordinarily we use the word improperly; these are not strictly speaking laws. The laws proper are only the natural law.

Now let us consider this passage for one moment. The natural law is the highest reason inherent in nature. But this is then qualified. It becomes law -- this reason becomes law only if it is confirmed and perfected in the human mind. This would mean that natural law is the same as prudence, as Cicero understands the word prudence, namely in the Aristotelian sense. Prudence is not cleverness. Completed in the mind of the wise man, it is the natural law. This leads to -- since a part -- since prudence has also to do with ordering the affairs between men prudence necessarily leads also to justice in particular, i.e. to give to each what belongs to him, and it is further implied that unjust laws -- and even explicitly stated -- are not laws. But Cicero also uses the word natural law of the reason of the highest god which rules the universe. The divine mind itself is the highest law. Now what does this imply? -- this view of natural law imply? First, man is by nature the rational animal, as is here indicated. The perfection of reason is virtue. So man is by nature directed or ordered toward virtue because the perfection of his specific difference, reason, is virtue. And secondly this means man is by nature social. Man is by nature social; and therefore the completion, the perfection, of his sociality, i.e. justice, is something toward which his nature tends. Now what does this mean in a way which is intelligible to those of you who have never heard of that?

I read to you a passage from the third book of the *Laws*, section 43. "If nature is not to be considered the foundation of justice that will mean the destruction of the virtues on which human society depends. For where, then, will there be a place for generosity or patriotism or loyalty or the inclination to be of service to others or to show gratitude for favors received? For these virtues originate in our natural inclination to love our fellow men and this is the foundation of justice." In other words, we have a natural inclination to love our fellow men and since this inclination is natural surely its full perfection will be according to nature. Now this is very hard for us to understand and since I do not wish merely to repeat some dogmas which might merely sound strange we must -- I think this is a good point for seeing what this means because could one not say that we don't see much of this natural inclination of men to love their fellows? Is this not a fairly obvious objection to Cicero?

Let me first read to you a passage from someone who almost explicitly takes issue with Cicero on this point. This is Hobbes in his book *On The Citizen*, chapter one, end of the second paragraph. After a long argument, "It must then be stated that the origin of great and lasting societies consists not in

men's mutual benevolence but in their mutual fear." And Hobbes gives a long argument in this section in which he shows the great lack of benevolence which men show. And if I remember well he gives also this example -- well, he was, of course, accused to be a misanthropic man because he said men don't love each other, and then he said, well, look around: why do fathers lock their money in money chests? I mean, even if there are no servants in the house. I mean, if they don't trust their own children do I teach them to do so? I merely state

that it is so. In other words, there is so much -- there is much benevolence among men but there is also so much of hatred among men. Why should the one be more natural than the other? That is, I think, an argument which would come very much at the present time and plays a very great role especially in the seventeenth century. Now first this gentleman.

Q: What are the references in Cicero? You read two quotations --

S: The second was -- the thesis about natural benevolence, that men love each other naturally: Laws, Book I, section 43. That's all. That's simple. And Mr. Mogati. Pardon? No, first Mr. Mogati. Then you -- it's your turn. Oh you were before -- you raised your finger --

Q<sub>2</sub>: (Inaudible).

S: Oh, first was in Laws, Book I, paragraphs 18 to 19. Mr. Mogati.

Q<sub>3</sub>: I got confused about something you said. . . . You talked about Cicero and the natural law and you said something about it had to be completed by human reason. . . .

S: Yes, there is something -- that was correct. It must be completed in the mind of man and more particularly, in the mind of the wise man.

Q<sub>3</sub>: I was under the impression that the law was -- and here is the difficulty -- that the law was a transcendent, unchangeable standard.

S: Yes, but what does this mean? I mean, the law is that law by which the ordering principle, the highest god as Cicero says, orders the whole and assigns limits to everything. Yes? I mean, heavy bodies cannot -- bodies cannot do what the mind can do and things have their characters. There are always limits to things. Think only of the difference between dogs and cats and then you will see what it means. And now -- in the case of man, there are certain limits set to him, things which he cannot possibly do, but he has a very great range, a much greater range than any other animal and therefore man -- but man has some direction by nature and these are his natural inclinations. But to perfect those inclinations is left to man. In other words, man does not grow virtues as a puppy grows into an adult dog. He has to build himself up as a virtuous man. Now this implies that he has also to make clear to himself what the natural inclinations are and what their perfection is. Therefore, the natural law insofar as it applies to man must be perfected in the human mind. This is, I think, what he means. For example, if -- let us assume that -- which is, of course, an --

Q<sub>3</sub>: I misunderstood you.

S: Yes. No, let us assume that we all love each other, are benevolent to each other. Now this, of course, is -- you cannot possibly leave it at that because



that can go together with the greatest folly and therefore some discerning is necessary. Which act of benevolence is the right one to this man and the right one to another man, and so on. This discerning -- sake of reason -- and this perfection of the natural inclination and of the natural reason is man's own work, but in perfecting it he follows nature's guidance. That is meant by that. It's now clear? Good. Now was there -- yes?

Q<sub>4</sub>: Assuming Cicero's concepts of the necessary perfection of reason in order to achieve natural law, does he mean by this a strictly philosophical perfection as would Plato or does he mean a relatively simple grasp of moral principles?

S: Yes, well this I would say he implies, but the full understanding of duties; let me say, would be a matter for the wise man, not for every man. I mean, he would assume some awareness of it in all men. I believe there is no difference between Thomas Aquinas and Cicero in this particular point, because there it is also left to man to deduce the conclusions from the natural law -- in Thomas. Yes? There's no difference.

Q<sub>5</sub>: I lost the connection -- the contradiction between Cicero saying it is natural for man to love each other and yet the father to lock up his chest on his children.

S: That's Hobbes' objection.

Q<sub>5</sub>: What did you say?

S: That is Hobbes' objection to Cicero and shows how little benevolent we are. I mean, also either how nasty that father or how nasty are his children or both. Pardon?

Q<sub>5</sub>: But Cicero must have been aware of that too.

S: Sure. Exactly. In other words -- I mean, this -- everyone who is not a babe in the woods knows the facts of human malice and Cicero, who surely had quite a bit of intercourse with that malice, as is shown by Catalina and other individuals, must have known it. Now what then does it mean? Now let us take Hobbes' analysis as a starting point. Hobbes can be said to say, although he doesn't explicitly say that, man so far from being benevolent to his fellow men is a natural enemy of his fellow men. Man is by nature nasty. Yes, but what does that mean? What is that fundamental malice in man? Now Hobbes analyzes it and finds then something -- the following root: that man is concerned with his self-interest. In other words, that everyone is more concerned, generally speaking, with satisfying his hunger than the hunger of someone else or with getting rid of his toothache than with getting rid of another man's toothache. That Hobbes doesn't think is in any way bad. That's natural. But there is something else which is really wicked in man and that he calls with a Biblical expression, pride. Men do not want merely to have what they need and even perhaps in case of conflict to have it over the protest of others, but they want to be superior to the others. They want to be recognized as superior to the others and that hurts them, naturally. You know? -- because that you want to satisfy your hunger and the other fellow wants to satisfy his hunger does not essentially lead to conflict. It may lead to conflict when there is great scarcity, but not necessarily. But if everyone wants to be superior to the other this necessarily leads to conflict. I mean, "a" wants to boss "b" and "b" wants to boss "a" and that means war. So pride; but what is pride, then?

Now pride means concern with the opinion of others. Pride is a social passion. The anti-sociality doesn't do away with the fact that it is based on a fundamental sociality, a fundamental concern with the others. So deep, in other words, is the sociality of man that even his worst vices are constituted by sociality. This is one point. Now take another example which I have heard frequently said. For example, when people speak of the malice of men, which is indeed very great, and -- for example, what the Nazis did to the Jews. And some people say they treated the Jews like beasts. That's not exact. No one treats a beast that way. The concern with -- I mean, if someone is cruel to a beast, ordinarily, meaning callous and doesn't care whether the horse suffers from a whip or not, this is something entirely different. The concern was here with humiliating the Jews; and no one who maltreats a beast, unless he is somewhat mad, wishes to humiliate that dog or horse or whatever he deals with. But this means, of course -- that is the same thing which Hobbes has in mind: the concern -- a passionate concern with the others, a perverted passionate concern, but a perverted passionate concern always presupposes as its foundation something non-perverted. So that one could say even the most striking facts of man's inhumanity to man point to a passionate concern of man with his fellow men. Surely that does not solve all difficulties but these are the things which Hobbes simply did not properly consider and which are surely considered by man -- by Cicero. Now Cicero would -- by the way, I stated to you already the implicit reasoning of Cicero: that a perverted sociality, what we ordinarily call anti-social -- these juvenile delinquents are not asocial, they are anti-social. They are very much social. Their concern with status symbols, of which I read, is a sign of their sociality, of course. I mean, status symbol means, of course, to be concerned with the preferences obtaining in this particular society. Yes? A Cadillac, I have been told, is a status symbol and some form of beard can be a status symbol at the University of Chicago, I have been told, and these other things. But this is all social, radically social. Asocial would mean absolutely indifferent to others, absolutely indifferent to others, and this -- I don't know whether that's humanly possible but as Aristotle says this is possible only for brutes and for gods; surely not for a human being, for an ordinary human being. So, to repeat, man is radically social and what we understand by anti-social, and quite rightly, is only a perverted sociality which as perverted sociality points to a normal, natural, healthy sociality and that is a positive concern with one's fellow men. Yes?

Q6: (Inaudible).

S: You mean -- yes, but one could say this. In a wider sense of the word you can, of course, say everything which men do is natural but that is not . . . (unclear -- this section of tape badly recorded). Then you can say cancer is also a natural phenomenon and yet when we make a distinction between a healthy man and a man who suffers from cancer we do not impute the human body a merely subjective distinction between a healthy body, which we like, and cancer, which we do not like. We imply that a disease is a disordered state of the body; disordered, i.e. the natural order of the body is and the same would apply to the health of the soul because that is the way in which all the earlier thinkers understood virtue. I mean, not all but those of whom we are speaking now. There is an orderly state of the soul where it can perform its functions, and a disordered one in which it cannot do that. That are the vices. For example, one function of man is to think, especially to think about his affairs, how to order his life toward that kind of happiness which we can reasonably expect. Now if someone is unable to resist the temptation of alcohol or of the gambling table then there is something wrong with him. There is

a certain disorder there. I mean, what does it mean that we have a discipline called psychiatry? I mean, common sensically speaking it means that we make a distinction between a sound and an unsound mind and this distinction is not meant to be based on our likings or dislikings but on what they call an objective difference. So the mind is naturally able to become unsound. To that extent unsoundness is natural, but it has at the same time in itself a tendency toward soundness. This is meant by this distinction. Yes?

Q7: (Inaudible -- pursues Dr. Strauss' remarks regarding perverted sociality.)

S: Yes, then one would have to go more deeply into those things and one would have to go into the phenomenon especially of hatred. Yes? What does hatred do to a man in contradistinction to benevolence? Yes? I do not say love because love can also mean sexual love and we have known from the literature that some people become quite mixed up if they are in love. So -- but let us take the somewhat cooler thing called friendliness or benevolence. Yes? Now look at what hatred does to a man. Does it not make him narrow and does it not degrade him? Does he not become, against his will, a subject of him whom he hates? You know? In other words, is there not something -- would a closer look at hatred not show that it is intrinsically a perversion?

Q7: You could demonstrate that love is dangerous and damaging also.

S: Yes, sure, not only to the others but even to the man himself. That he becomes lower, lesser, narrower, by following -- by becoming a slave of these perturbations, of these perversions. I mean, surely, you must not forget that this whole doctrine of virtue or of the healthy soul was not limited to these general statements. They only indicate the fundamental principles. But those dry bones had a lot of flesh around them in the modern reflections about what the various passions do to man and how they affect him. I mean, we have another example at the beginning. Today the poorest formalism conceals all these things. You know, any objective, any goal, which a man puts before himself is as good as any other and you can't say anything about it, which one can only say quite thoughtlessly. For example, when this man said in his article which I read to you, you can choose power as your goal as well as, say, intellectual clarity. You can say that easily and the fact is undeniable that there are quite a few people who choose power as their goal. But again, one must inspect this more closely and must see what it does to a man and how we, all of us, see it as soon as we -- yes, we must have some experience of life. A six year old child could not see that. . . . I mean, the pettiness which is essential to any concern with power as power when the objectives for which power are sought are not taken into consideration. In other words, one must not leave it at a formula. One must look at the phenomenon in its fullness. This these men did and I would say the question is ultimately -- there are very important theoretical questions which -- where one can very well have legitimate doubts, but. . . .

(Change of tape).

. . . a man -- just as we can speak of a man healthy in body, as we surely can, we can also speak of a man healthy in soul. Now the higher we -- the fuller we take that -- that I admit -- the fuller we take this notion health of the soul the darker things become and the simple symptom of that is if you take, for example, the view -- contrast the view of a Jew or a Christian regarding the health of the soul with that of a Buddhist. There will surely be great differences, not perhaps on the level of ordinary conduct -- there is not such a



difference -- but when it comes into the higher reaches, and there there is surely great darkness and that no one can deny. But there is a great difference, as I said on a former occasion, whether you cannot settle the question, say, between Buddhism and Christianity or whether you cannot settle the question, say, between Lincoln and a low class ward healer, whatever you may think of the wisdom of each action of Lincoln. And I think the question, the latter question, is settled easily by every man and woman of ordinary common sense; and our social science, however, the general ideology now, treats the two cases as equal and this, I think, leads to a very great impoverishment. If the social scientist wisely stops and refrains from answering questions which are of immense complexity that is one thing. But if he stops at difficulties which are not difficulties then he cannot be regarded as a wise man. Yes?

Qg: You use an appeal to common sense, then, as the basic objective realm for distinction between healthy conduct and unhealthy conduct?

S: What does common sense mean?

Qg: I was under the impression that there would necessarily be an objective standard for making this distinction and it seems that this is common sense or the opinions of what are the standards. ( ?? - uncertain of last 5 words).

S: Yes -- no, but -- no, what -- well, what would we mean by common sense is the use of reason to the extent to which we all use it in daily life. In other words, common sense does not mean -- is not simply an appeal to opinion. Now -- and when I say this I say look at what you yourself are doing when you say this fellow is mad or he is -- that something is wrong with him. Surely you may make mistakes. He may simply be different from you, and without the necessary experience you may think that someone who acts differently from you acts unreasonably. That is, of course, unreasonable: to judge on this basis. But for this reason we need experience. We must have seen all kinds of men to see that not everything which differs from our ways is necessarily wrong or foolish. But I say everyone among you, I believe, must have had the experience to which I appeal: that we cannot live without making these distinctions. That they are, as we ordinarily make them, not exact and in many respects too rash and all this kind of thing I, of course, grant but on the other hand we cannot simply say because it doesn't have the lucidity of Euclid therefore it has no grain of truth in it. That is indefensible. Yes?

Qg: But if it is not rigorously logical it does give way to a variety of interpretations. . . . (rest of remark inaudible).

S: Yes, but that is -- no, I mean a variety of interpretation -- what does this mean? Ultimately it would mean there is a variety of notions of human nature -- yes? -- which are equally good. For example, the notion that the higher life of man, the moral-intellectual life of man, is a mere derivative from the satisfaction of his sensual needs: food, sex, and so on. That is one thing. Surely we have that. Freud and his followers do exactly that and, in a way, also Marxism. Surely one -- I mean, all kinds of things are done and to that extent possible, but the question is whether they are reasonably done. At any rate, let me -- I must leave it at this point now to indicate, at least, that what Cicero says is based on broad reflections and cannot be simply dismissed by reference to the fact that there are so many men who act malevolently toward one another. So these are the first two premises: man is by nature rational and man is by nature the social animal.

The third is the noble or just things are to be done for their own sake, not for the sake of pleasure, utility, or reputation. This, of course -- many people would say of course the noble and just things must be done because they are eminently useful and they provide, perhaps, pleasure, and they are surely very useful for reputation. I mean, a man who is generally known to suffer from all vices, from all vices, is generally shunned. So this -- in other words, if the striving for the noble and just things is understood as merely in the service of something else and not for its own sake then this is not compatible with what Cicero has in mind. And the reason is this: if the just and noble were pursued for the sake of something else then the pursuit of it were based entirely on calculation, on calculation. It pays to do that. And it would not be based on nature itself. So that the key implication of Cicero's teaching is that there is a natural inclination in man, perverted in various ways, for the noble and just as such.

The fourth point which we observe in reading Cicero -- you might read paragraphs 40, following -- the unjust are unhappy. What he has in mind is the bad conscience. And the fifth, and last I mention here, is only the philosophers can be virtuous and just.

I illustrate Cicero's teaching by a few quotations. I mean, because only -- without examples these reflections are of no use. He speaks here of the laws regarding burial. "The rule that ownership of the entrance court of a tomb or of the mound may not be acquired by possession protects the special privileges of grace. These are the rules which we find in the Twelve Tables /The oldest document of Roman law/ and they are certainly in agreement with nature, which is the standard of law." Now what does this mean? How can we understand that? That a certain protection of grace, something very special, should be -- that's one of the few occasions where Cicero refers to natural law when speaking of particular Roman laws. Now what does he mean? In a later passage, paragraph 67, he refers to Plato, what he says about funerals. He forbids any piece of land which is in cultivation or capable of cultivation to be used for a grave, but provides that the greatest possible use should be made of the sort of land which can receive the bodies of the dead without injury to the living. Now Plato clearly takes an entirely different view. Plato says there must be regulations that the graves do not interfere in any way with the needs of the living. So this would seem to mean that -- I mean, that ultimately it is not the Roman law, but what Plato pronounces about the graves is more reasonable. This is one example and another example we find at the beginning of Book III of the Laws. Let me see whether I find it. "Nothing is so completely in accordance with the right and the condition of nature and when I use this expression I wish you to understand that I mean law as its government, without which life is impossible for households, the city, the nation, the human race, nature of things, and the universe. For the universe obeys gods; seas and lands obey the universe, and human life is subject to the decrees of the supreme law." In other words, here the phenomenon of rule, of government, is declared to be natural, i.e. not to be based merely on human relations.

Now all these points which I have mentioned, these five points which are implied in Cicero's teaching, we find already in Plato and Aristotle, but there is no natural law in Plato and Aristotle. We still have not yet answered the question, what is the specific premise of the Stoics which we do not find in Plato and Aristotle? And to this question one can give only, I think -- I see only one answer and this is the Stoic teaching regarding Providence. The natural law, as the Stoics understand it, is fundamentally a Providential order.

Now why is this necessary for natural law? Because the natural law must have sanctions or there must be punishment for the unjust? In a way, yes. There must be some sanction. The misery accompanying injustice is the sanction for natural law and this, I believe, was the empirical question which was always in the center of discussion: namely, are the criminals, the unjust unhappy -- are they tormented by their conscience or are they not? And of course a question which is impossible to decide empirically because if you find thousands of repenting criminals you cannot possibly know the other thousand of whom no one knows because they keep it close and hidden in their -- what is going on there. To this one can make this objection: we find an explicit teaching of Providence in Plato and especially in the tenth book of his Laws he gives what is claimed to be a demonstration of divine providence and divine punitive justice in particular. This is a very long question. The fact is undoubtedly, but we must also say there is also conflicting evidence in Plato. For example, in the dialogue The Statesman the Eleatic Stranger, the speaker there, presents a myth which is meant to indicate the fundamental political problem, and according to that myth the universe has two stages which recur infinitely often. In one stage the gods rule. In the next stage the gods do not rule, and only in that second stage where there is no Providence is it necessary for men to take care of their affairs, i.e. is politics, human government, necessary. As for Aristotle, I remind you of a single statement: when he speaks in his work on the soul of an earlier Greek philosopher who said intelligence, cosmic intelligence, rules everything, rules, Aristotle says, i.e. noútsi, i.e. he knows, he thinks. There is not properly rule but by being what it is -- that is, after all, also the Aristotelian teaching itself -- by being what it is the god as the unmoved mover, without issuing commands or laws of any kind -- he acts as an attraction, as it were, to all other beings to very different degrees but there is no care for them, no reward or punishment inflicted on them. Natural law seems to be connected and to derive -- to be based on the view that there is a legislating god. This notion is not implied in the doctrine of natural right as presented especially by Aristotle.

I turn now to Cicero's Republic, which is -- Cicero's Republic was -- had disappeared for many centuries from classical antiquity and it was recovered only about 140 years ago in a Vatican manuscript so whereas the Laws were known throughout the Western tradition and could therefore be used the Republic was wholly unknown and could not affect the tradition, except quite a few quotations in Augustine and other authors but otherwise it was unknown. Now what is, then, the teaching of the Republic? Before I turn to that I would like first to find out whether there is any point you would like to discuss -- before I turn to the Republic; because in the Republic the same teaching is also presented in the third book, but from a different point of view. Yes?

Q: I just want to clarify how Cicero's teaching differed from the Stoic teaching.

S: Yes, that is exactly the question to which I would like to lead up. This becomes clear not from the Laws but from the Republic. And in a way I gave the answer already before: being an Academic, i.e. not a Stoic, he cannot have exactly the Stoic natural law teaching except -- I mean, there is a crude, practically sound statement but not as theoretically tenable. And the proof is very simple -- I may mention this right away. Cicero wrote a book called On The Nature of the Gods in which the Stoic teaching regarding Providence is presented first and then criticized by the highest priest of pagan Rome, the pontiff ex maximus. And Cicero, of course, also fulfilled certain religious



functions -- you know, civic religious functions, we can say, and this was -- but Cicero criticizes that. I mean, On the Nature of Gods ends with a -- culminates in a refutation of the Stoic doctrine, and the Stoic doctrine regarding Providence was connected with the doctrine regarding divination. Cicero wrote also a special treatise on divination, dialogue, and where his brother Quintus, the Stoic, presents the Stoic teaching regarding divination and Cicero himself in the second book refutes the doctrine of divination. So I think Cicero was not a Stoic but he regarded certain Stoic doctrines as practically sound. That is all one can say. He was -- he himself was not -- surely not a Stoic.

Q<sub>2</sub>: He preferred it to Epicureanism.

S: Yes, sure. On very healthy political grounds he felt that the Epicurean doctrine with its emphasis on pleasure and especially on private pleasure was not good for having, for producing good Roman citizens. And finally in a way in his Laws is that the Epicurean Atticus is presented as agreeing to the Stoic teaching regarding natural law and Providence, and of course Atticus did not agree to it in his capacity as an Epicurean but in his capacity as a public spirited Roman citizen. These are two different considerations -- you know? By the way, Cicero's book, On the Nature of Gods became the model for Hume's Dialogues on Natural Religion where we find a comparable difficulty. Now there was -- oh, Mr. Butterworth.

Q<sub>3</sub>: (Seems to have understood some part of Cicero's writing as saying that justice was no more than positive right).

S: No, Cicero did not say that. No, I do not know. In other words, justice is one of the four cardinal virtues and since what justice in particular prescribes is the right in the specific sense therefore right, natural right, is a part of what is dictated by natural law.

Q<sub>3</sub>: But if all law, positive laws, are relative to regimes --

S: Yes, but this, according to that teaching, could apply only -- would have to be qualified. One way of qualifying it is this: that all laws are relative to the regime, let us say, which is, of course, not literally true. I mean, you can see how much of a previous body of laws survives even after very great and violent changes of regimes, but in a rough sense it may be true. Then the question recurs regarding the regimes: which regimes are better or which regime is just and so. You know? So, in other words, the specific things -- when Cicero has equivalents to the two goats or one sheep which we read in Aristotle this is, of course, merely positive, but when it is the general question of worshipping the gods, in a very general way, this is of course meant to be natural law -- but specific Roman institutions. For example, that you have an institution of virgins, the Westphalian virgins, with special functions. That's clearly positive Roman law and it is only -- the relation to natural law is only that -- or natural right -- is only that it does not contradict natural right whereas other institutions -- for example, say certain immoral oriental cults with all kinds of promiscuity -- that would be another matter. That would not be tolerated, from this point of view.

Q<sub>3</sub>: And then we could bring Cicero to say this -- that it could not be tolerated?

S: Well, I do not remember a case -- I mean, as I say, references -- when he

speaks -- the book, after all, deals with Roman laws, or with re-written Roman laws -- Cicero changes them so that they fit the best -- that they are really good laws. Now these laws are not claimed to be dictates of natural law, but since natural law is the basis you have, of course, to wonder all the time what of that is natural and what is positive. The explicit references to natural law were only the two which I mentioned -- you know, regarding grace and regarding the fact of government -- government is according to natural right -- not more. And here you have to use your own judgment. Yes?

Q<sub>4</sub>: (Inaudible).

S: Well, the emphasis is what we would call the pangs of conscience. Well, in the Greek the furies, the furies pursuing Orestes.

Q<sub>4</sub>: That's hardly this life. Do they believe in the immortality of the soul?

S: Yes, that was surely implied, but also in -- but it is not explicitly mentioned in this context, but the point is that the unjust man cannot be happy, cannot have peace of mind. That is the assertion and that, of course -- I mean, this is a very long question, to what extent this is universally true. You know, empirical evidence is often -- cannot be available; can't in the nature of the case. Well, I will only say a few words about Cicero's Republic, which is the basis of the Laws.

This is a dialogue about the best regime. And it is -- Cicero fictitiously presents that discussion as having taken place about eighty years before his time, say shortly after the destruction of Carthage, and Scipio, the younger Scipio Africanus (?) is the chief speaker. But the work is divided in this way: that they raise first the question of what is the best regime and this question is answered by Scipio in a fundamentally un-Stoic manner, but -- which doesn't mean that it's anti-Stoic. It could be as well Platonic or Aristotelian. And then the question of right or justice comes up in this context: can you have a great flourishing commonwealth without committing acts of injustice? Now this takes on special sharpness for the following reason: Scipio asserts that the best polity that ever was is the Roman polity, which meant the Roman empire. And so for all practical purposes it means did the Romans become so great merely by being of signal justice or were they not compelled to do some gross acts of injustice to become the imperial nations? This is the theme of the Republic.

Now in Book III not Scipio but a lesser man, the oldest man present, Lelius, has a discussion with another man called Philus about this question of justice: is justice by nature or is it merely by convention? Lelius says it is by nature and Philus, it is by convention, and therefore we have a discussion fundamentally like that between Glaucon, Socrates and Thrasymachus and Socrates and Callicles in the Gorgias but more detailed, more detailed, and because here the political question, the question of foreign policy, as we would say, is fully present all the time. And here we have this famous case which in this form never occurs in Plato and Aristotle: are there not cases which show the breakdown of justice, the limits of justice and in a way the breakdown? And this is the famous case of the two men, shipwrecked men, on a raft where who can decide what's right and wrong if one pushes the other into the sea? You know? In other words, justice is possible only within a limited sphere, within a limited sphere. In the really tough cases it is not possible. Does this not show that justice owes its power entirely to human arrangements: that you have

government and so on and so on. This is roughly the problem discussed. And this has a great later history because this case of the two men on the raft where you are compelled or where you seem to be compelled, where you seem to be compelled to kill an innocent man -- that's of course the assumption, an innocent man -- merely because he stands in the way of your self-preservation without having injured you in any way: this limit case became, in a way, the starting point of that new type of natural law or natural right which emerged in the seventeenth century. One can state it as follows: it is comparable to Descartes' universal doubt, the universal doubt now here specified regarding moral questions, regarding justice. And just as Descartes believed that the extreme doubt of everything leads to the absolutely indubitable, to the absolutely certain, which he found in the thinking ego, Hobbes found the root of justice in the situation of the two men on the raft because he argued as follows. Each of them is compelled to kill the other or to try to kill the other, compelled by the power of the instinct of self-preservation. Therefore, this instinct of self-preservation must be made the very basis of justice -- because he would -- one can say he argued as follows. Why do you Carneides (?) choose this case of the two men on the raft? Why do you not take the case of two men walking somewhere in a wood without any danger involved? Why do you do that? Because in the case in the wood it would be perfectly clear that the assailant commits an unjust act, the unprovoked assailant. But here? Here we have a case, the basic case of justice: when a man defends himself against another man and without any regard of justice or injustice involved and whether one of the two is a just or unjust man; mere self-preservation. This need to preserve himself, this inevitable necessity as Hobbes understood it, is the basis of all right as Hobbes then developed -- will show this later. The difficulty, of course, is this: that no one can say that there is an absolute necessity to do what the two men -- or one of the two men -- on the raft is supposed to do. It is possible for one of them to say all right, you are younger, or so; let me perish. It's perfectly possible, of course. Therefore there is no genuine necessity and that is, I think, the real weakness of Hobbes' otherwise ingenious turn-around of this question. Now next time I will say a few more words on Cicero and then turn to what can rightly call the classic natural law teaching, that developed by Thomas Aquinas.



Lecture 11: November 11, 1962

(In Dr. Strauss' initial remarks to open the lecture, not recorded, he said he would discuss Cicero's Republic).

... beginning at the general question; which way of life is preferable, the way of life of theory, of contemplation, or the practical or political life, and as a good Roman and great Roman he decides in favor of the practical or political life. Now in this connection there occurs the following statement about natural right. Cicero says here, "As far as our lands, houses, herds, and immense stores of silver and gold are concerned, the man who never thinks of those things or speaks of them as goods because he sees that the enjoyment of them is slight, their usefulness scanty, their ownership uncertain, and has noticed that the vilest of men often possess them in unmeasured abundance: how fortunate is he to be esteemed." In other words, the man who despises the external goods. "For only such a man can rightly claim all things as his own by the virtue of the right not of the Roman people but by the right of the wise, nor by any obligation of the civil law but by the common law of nature which forbids that anything shall belong to any man save to him that knows how to employ and to use it."

Now this is the point which we have mentioned already in connection with Plato's doctrine in the Republic. What is by nature right in the sense of what is by nature belonging to a man can only be that which is good for him, of which he makes a good use. This is the only natural right. The right according to which things belong to someone because he has acquired them legally by inheritance or purchase or whatever it may be is not a true natural right. This extreme view which cannot be adapted to ordinary human life except via delusion is presented here by Scipio and he goes so far, somewhat later on, to say -- this is in the first book, paragraph 27 and paragraph 28 -- "What power, what office, what kingdom can be preferable to the state of one who despises all human possessions, considers them inferior to wisdom, and never meditates on any subject that is not eternal and divine," i.e. who never meditates on any practical subject, every practical subject being changeable, "who believes that though others may be called human beings only those are human beings who are perfected in the arts appropriate to humanity."

Now since all duties we have, at least in ordinary understanding of duty, are duties toward other human beings and if the majority of "human beings" are not human beings, what happens to our duties toward them? These are all implications of Plato's Republic but the remarkable thing is that in Cicero's Republic one of the greatest statesmen of Rome is made to repeat these most daring and extreme statements of Plato. On this basis natural right in the ordinary sense could never arise except by dilution, as I have stated before.

The primary theme of Cicero's Republic is the best regime. This question is answered by Scipio in the first book on the basis of two natural right principles. First, man is by nature social; and secondly, there is a natural hierarchy, a natural super- and sub-ordination of various beings and in particular also within the human race. This is not the place to discuss Scipio's teaching regarding the best regime. It is sufficient to say that whatever the best regime may be, Scipio asserts it is actual in Rome, i.e. in the Rome of his time which is about a hundred years before Cicero's time. From Cicero's point of view it is already decayed.

In the second book of the Republic Scipio describes the origin and growth of Rome with the understanding the origin and growth of the best regime that ever was. Without emphasizing it, Scipio alludes to the questionable justice of Rome. Well, he takes the old stories of Rome as literally, historically correct, of course, where there is a famous murder of Remus by his brother, Romulus. In other words, Rome is founded on fratricide, a favorite topic of Machiavelli later on. This is only alluded to because Scipio tries to present Rome as as just as possible, but just isn't just enough. He cannot help referring to the rape of the Sabinian (?) women, the pillage and plunder which the Romans committed, and last but not least, the swindle committed by the Senate regarding Romulus having ascended to the heaven as a god. The thesis which Scipio maintains is Rome and Rome alone reached her greatness by some natural road, by some natural road. Not only is it the best regime in its final structure, but the road at which it arrived at is natural. Now this means not planning. The ordinary notion which the Greek thinkers had is this: the best regime is an order according to nature but this order must be established by men. It does not come into being without such human establishment. It does not come into being by a natural process of growth. Rome, on the other hand, seems to have come into being by such a natural process. Now what does this natural process mean? That is not explained by Scipio but there is one passage of the utmost importance which throws light on it: Book II, paragraph 57.

After a short period, in about the sixteenth year of the republic an event occurred which in the nature of things was bound to happen /You see: the nature of things was bound to happen/. The people, freed from the domination of kings, claimed a somewhat greater measure of rights. Such a claim may have been unreasonable but the essential nature /or the very nature/ of political things often defeats reason.

This, in other words, is the character of a natural road: that sometimes the nature of political things defeats reason. In this particular case the greater power, the greater brachial power of the multitude brought about certain arrangements in Rome. So -- and since there is such an essential connection between reason and natural law this means, of course, also a deviation from natural law which cannot be avoided and this would be in perfect agreement with what Scipio said in the first book. Nevertheless, Scipio insists most strongly on the need for justice. The commonwealth cannot be governed without the highest degree of justice. Now this view is, of course, not universally admitted; in fact, it is rejected by some and therefore one has to take up the whole question of politics and justice, human life and justice, and this is done in the third book.

In the third book not Scipio but Lelius (?) states the case for justice and another interlocutor called Philus, an academic like Cicero, states the case against justice. Now what is the argument? Those who deny justice start from the premise that nature is a step-mother, not a mother. She treats men badly. She treats men badly -- man is in need by nature and this need is so great that it is not possible for him always to be just. This is roughly the case against justice. The case for justice, on the other hand, is based on the view that nature is not a step-mother but a kind mother; or non-metaphorically stated, the case for justice is based on the belief in Providence. Now the argument is roughly this. (There is nothing particularly novel but I have to mention it again to remind you of what the issue was in former times). The opponent of justice, i.e. of natural right, denies the existence of natural right on the well-known ground of the infinite variety of notions of right which

prevailed. That's a very popular argument in classical antiquity as well as in our own time. This is not sufficient because one sees if one looks a bit more closely that there is a certain common core of what men understand everywhere by justice. Justice has, in other words, a very definite meaning and what the opponent of natural right, Philus, does is exactly to question that. I read to you a statement of Philus to make this clear. Well, I read it first and then explain it.

Wisdom urges us to increase our resources, to multiply our wealth, to extend our boundaries. For what is the meaning of those words of praise inscribed on the monuments of our greatest generals? "He extended the boundaries of the empire." Except that an addition was made out of the territory of others. Wisdom urges us also to rule over as many subjects as possible, to enjoy pleasures, to become rich, to be rulers and masters. /This is what wisdom or prudence says/. Justice, on the other hand, instructs us to spare all men, to consider the interests of the whole human race, to give everyone his due, and not to touch sacred or public property or that which belongs to others.

So this meaning of justice is fundamentally the same everywhere. The just man is a man who gives everyone his due, who so far from harming others helps them as much as possible, and so on. So this is the question then: is justice thus understood, as it is understood more or less clearly in all ordinary notions of justice -- is justice thus understood good or bad? The variety of notions of justice is not the fundamental issue.

Differently stated, that without some degree of justice no society can last is obvious and thus has been known all the time, at least since Plato's time, by the example of the band of robbers which cannot last if they do not have a reasonable degree of commutative and even distributive justice among them. And so what is true of a gang of robbers is, of course, true also of civil society. But the question is this: is the civil society essentially different from a gang of robbers? For it is, after all, possible that a civil society, a nation, however you call it, might act on these principles of justice among its members but not be bound by any consideration of justice toward any outsiders. This would be exactly that parallel. In other words, the admission that justice has some genuine meaning and justice is necessary is perfectly compatible with a denying of the natural character of justice. Do you see that? I mean, because no one would assert that the gang of robbers acts on any principles of justice. It is simply shrewd calculation. How can Al Capone keep his boys together unless he satisfies them so that they have no reasonable complaint? So he must exercise his authority in a certain manner. I mean, of course he can shoot any traitor. That goes without saying -- a civil society does. But he must be a traitor. He must not merely be accused of being a traitor. Also a sound principle in a law. And so on. This is elementary and everyone admits that. But the question is, what about the society itself, as a whole in its relations to other societies? That is the practical meaning of the question of whether there is natural right or not.

Now one can avoid the statement of this form as follows, as Plato has tried to do in the Republic. Is there no other criteria for distinguishing between the city and the gang of robbers except the conduct toward outsiders? Now let us use our experience, and we all have very great experience with criminals, as you know from the daily papers and other sources of information, if not, unfor-



tunately, more direct forms. What do the criminals do after they have gotten their loot? What do they do with it? What is the end for which they commit their crimes? Now you surely know that they gorge themselves with all kinds of food and drink and there are also so-called dolls -- are absolutely indispensable, but that is all. Now, in other words, they are -- all what they do serves the purpose of a life of intemperance, to understate it. But a civil society does not necessarily do that. A civil society may be guided by principles of temperance, let us say, of moderation, and that is the solution which Plato suggests in the Republic. If the citizen body and especially the ruling part is dedicated to moderation then you do not need any principle of justice toward outsiders because that will flow as a matter of course. You know? There will be no obligations to other cities, but they will behave decently toward the other cities as a matter of course. But the more common view, of course, is that the city must be as much subject to a law higher than the city as the individuals are subject at least to the laws of the city.

Now the thesis of the enemies of justice, or the enemies of natural justice, is then this. By nature there exists only the useful, not the just, and the pursuit of the useful as useful is called prudence. Prudence, as pursuit of the useful, is good. Justice as justice is folly. To prove their case they must show that there is necessarily a conflict between the useful -- the utility pursued by various cities, various states, and that, of course, is confirmed by Rome -- how did Rome, allegedly the most noble and justest of all cities, acquire the empire? Let us see paragraph 30 of the third book. Oh, I'm very sorry. I brought the wrong text with me. Do you have -- that won't help. No, let me explain what I mean. This -- the text you have here in this edition and which is the strictly Ciceronian text is the one which has been recovered in 1820 and this is fragmentary, but other parts we know through reports by Augustine and other writers who still knew the whole book and these reports are, in a way, as much part of Cicero's Republic, of course, than the relative fragments which have been recovered such a short while ago, and to my great regret I do not have it here. I remember, however, the key point. How did Rome acquire her empire? Well, in the justest manner in the world: by defending her allies. The ally was attacked; the Romans came to their help and then after the aggressor was defeated he ceased to be an independent power. That's it. But is this not rather hypocritical because does conquest give the right to taking away that political freedom of the conquered nation -- and all this kind of questions would arise which have to be raised. That is -- Rome's empire was not established in a simply just manner. So that, of course, would not necessarily affect the issue of justice. One could say, well, that's too bad that the Romans were not perfectly just. This doesn't in any way render questionable the claims of justice. But still, it can however give rise to the question, is the conduct of the Romans so unusual or will we not find similar conduct in all states so that it is not merely an accident of this or that nation or this or that period, but is the world not so ordered that men are compelled to take away from others what belongs to them? And this is the question to which I referred last time, the question of the two shipwrecked men on the raft, where you have a clear case of a quasi-necessity of taking away something which belongs to another man on no other ground except your own utility. Is this not the fundamental situation of man which shows the essential impossibility of justice? Or, differently stated, you can have justice -- that goes without saying -- within a limited area, but within a limited area you have also justice in the gang of robbers and therefore -- this is, then, really the issue on which everything depends.

I state to you what Lolius explicitly says about the law of nature and this is a statement which is in no way new with what we have seen in Cicero's Laws and even in the Stoics before. Paragraph 33. "True law is right reason in agreement with nature. It is of universal application, unchanging and everlasting. It summons to duty by its commands and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligation by Senate or people and we need not look outside ourselves for an expounder or interpreter of it. We have the knowledge within ourselves. And there will not be different laws at Rome and at Athens or different laws now and in the future, but one eternal, unchangeable law will be valid for all nations and all times and there will be one master and ruler, God, over us all, for he is the author of this law, its promulgator and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature and by reason of this very fact he will suffer the worst penalties even if he escapes what is commonly considered punishment." In other words, he may not be punished with a loss of property and other things but by losing his humanity he has had the worst punishment which can happen to him. And this view of natural law, needless to say, explains also why all cities or societies, and not merely individuals, are essentially subject to a law. This law to which all cities are subject can, of course, not be a positive law given the absence of sufficient communication between the various states in classical times. In other words, there cannot be a positive international law; this must be fundamentally a natural law. You wanted to say something.

Q: (Asks for citation).

S: Cicero's Republic, Book III, paragraph 33.

Yes, and of course the difficulty which Lolius has -- Lolius can perfectly explain in this way why it is possible to make a distinction between just and unjust laws which is the great difficulty for the opposite view, but the practical difficulty which he has as a patriotic Roman concerns the justice of Rome. I read to you two passages. "Our people, by defending their allies, have gained dominion over the whole world." So no better title, a perfectly just title. "And do we not observe that dominion has been granted by nature to everything that is best to the great advantage of what is weak." One would have to consider closely the situation of the Roman subjects under the empire to form a good judgment of it, but let us not forget that in this Roman empire terrible crimes were committed, the famous case of \_\_\_\_\_ in Sicily, and yet there was a Roman statesman, Cicero, who accused \_\_\_\_\_ and brought him to justice just as Burke later on did in relation to Hastings in an exactly parallel case. This is all I have to say about Cicero. I hope you have read or will read the passages to which I have referred. Now is there any point which you would like to raise now?

Q: I was unable to find that passage on natural. . . . (inaudible)

S: You mean this one. Yes, I will tell you in a moment. That is in the Republic, 257. Yes. Yes. Good. I mean, by the way, this passage about the difference between Rome and the other cities -- that Rome was not mapped out by a single originator at the beginning but came into being in a long process -- that reminds very much of Burke's view that nothing -- that which is planned,

planned, blueprinted, is inferior to that which has come into being through a long process. The similarities are absolutely amazing and they are precisely because Burke cannot have known that passage. This was recovered only about twenty years after Burke's death. And yet Cicero means it very differently from Burke. For Cicero it is at least a possibility that a blueprinted constitution might be as good as one which was developed by a nation in the course of time. For Burke a blueprinted constitution is, as blueprinted, bad. In other words, the anti-rationalism of Burke in this respect has no parallel in Cicero. This I mention only in passing. I may have to speak of Burke in a somewhat later context. Now -- yes, sure?

Q2: Do you attribute any special meaning to the fact that in the Republic the dialogue begins with a discussion of a natural phenomenon?

S: The greatest importance, but it appears from the context, doesn't it? What is -- what's the context? In Cicero's Republic the first theme, so to speak, is a certain natural phenomenon. Two suns were said to have appeared in heaven and what are the causes of it? But then the more fundamental question is raised: why should this be of any interest to any man? That there are two parties in Rome deadlocked, on the verge of civil war, is infinitely more important than the two suns. That's roughly the situation. The question: the theoretical life and practical life. Very well, how did you understand it -- the connection with the polity? (Note - Uncertain that he said "polity.")

Q2: The only thing that occurred to me was the question should there be one true sun, one sun that was the only one to recognized really and was the other an illusion, or were there in fact two suns, each one essentially a sun, each one equal.

S: Well, this I do not -- I mean, I would assume from the context it appears that Scipio, at any rate, did not for one moment believe that there were two suns. So this is not the serious question. The serious question is: is the statesman -- does politics require theoretical science? That's the question. And the old fashioned, so to speak, Spartan view is no; also the old fashioned Roman view. These are affairs for leisurely Greeks who got what they deserved -- they were conquered by the Romans -- and no self-respecting Roman will deal with these purely theoretical questions. We rule imperially the world. That's Roman -- and acquire the virtues required for that, justice and so on, but not theoretical wisdom. And this was a very grave question, a very grave question. I mean that was not merely a question for book worms. It concerns the whole -- how Rome was to understand herself in relation to that subject which was, in a sense, most powerful and even more powerful than the ruler, namely Greece. A strange situation -- you see, if you -- if a Western imperial power conquered some part of Africa no question of this kind arose. Even in the conquest of India the West as a whole was absolutely sure that the West is superior to India or to China, for that matter. But this was different. The most intelligent Romans felt that they, or Rome, was inferior to Greece; and the whole -- how would they call it today -- the Roman ego, the Roman sureness of herself was absolutely confronted by this question. The Greeks were unable to speak up. I think one can prove that. There was no freedom of speech as, say, of freedom of criticism of the Roman rule. One must never believe that. The Greeks were unable to speak up but there were -- in the arts surely they were superior and I believe the greatest document of that are Plutarch's Lives where Plutarch in each case contrasts a Roman with a Greek and without saying it -- just by telling the stories -- without ever saying it, it appears that



the Greek was superior to the Roman with whom he was confronted. That is at least my guess on the basis of the few lives which I've studied from this point of view. So Cicero -- no, Cicero was, of course, convinced of the greatness of Greece, i.e. of Greek philosophy, and he tried to introduce it into Rome. That is the most lasting part of his life-work. After all, his affair with Catalina is forgotten -- I mean, had no effect beyond that time -- but that Cicero brought philosophy into Rome -- by this very fact he did as much if not more than Caesar did when he conquered Gaul. I mean, the whole Western world depends on this act, we can say, on this act of Cicero of bringing -- of Latinizing philosophy. And Cicero knew, of course, that this was a great achievement, at least as great an achievement as his consulate, and therefore he has to show -- and he has to effect a reconciliation between the Roman belief in the supremacy of politics, i.e. practical morality, versus the supremacy of philosophy, and this is, you can say, the primary purpose of the Republic. The solution is given in Scipio's dream at the end. Scipio dreams -- shortly before his death he has a dream in which his father and step-father -- adopted father -- I forget now the exact situation -- appear to him and he is shown the universe and therefore with the smallness of Rome, the paltriness of that object to which he had dedicated his life. But this he sees, and therefore, of course, the superiority of the theoretical life -- but this he sees only, as it were, at the end of his life. While he lives he is a Roman and a practical man, an imperator, general, administrator and whatever it may be. So this is the context of the dream. Now how does it affect natural right? I think that comes out very clearly in what Scipio says in the first book. From the highest point of view, theoretically the radical point of view, there is no private property except a right of the good man to those things which he needs because he is the only one who will use it well. But this principle, of course, destroys completely all civil society anywhere. If only wise men are permitted to own things, well, you know what will happen. They will immediately be killed by the non-wise who are debarred from property. That's not a practical solution. So you have to dilute that. And the other point: if only those who cultivate their mind properly are truly human beings -- if, in other words, the others in their eyes are not human beings -- how can they have genuine duties toward these others? So, in other words, natural right understood from the most radical theoretical point of view -- I mean, the Platonic point of view -- is incompatible with civil society. That means also you cannot understand the theoretical life as primarily understood if you do not raise the question of natural right. That's the simple connection. Did I answer your question? Good. Rabbi Weiss.

Q<sub>3</sub>: (Inaudible).

S: I stated this before. I mean, the natural law doctrine presented in Cicero's Republic and Laws and also elsewhere is the Stoic natural law doctrine and I spoke about the difference because in the Stoa the notion of natural law becomes for the first time central, contrary to Plato and Aristotle.

Q<sub>3</sub>: What I mean is the element that right is commanded whereas in Plato and Aristotle. . . .

S: Strictly speaking, no, but may I suggest that you wait until I come -- I have to take up this question when discussing the Thomistic view and then it may become clear. I will now turn to the doctrine of Thomas Aquinas, who one can rightly call the classic of natural law within Christianity and perhaps even generally speaking. Now let us first -- we must consider the context in which the natural law teaching occurs. In Plato and Aristotle the context was

political or moral: Republic and Laws are political books; Aristotle's Ethics is a moral-political book. In the Stoics the context was probably physics -- physics understood as the science of nature in general, because what later on came to be called natural theology was for the Stoics a part of physics. In Thomas Aquinas the context is theological. The most developed form of the doctrine occurs in the Summa Theologica, obviously a theological work devoted to the sacred doctrine, i.e. to revealed theology. But it is understood that the revealed theology contains also the rational doctrine regarding God and regarding the law which God gives.

Now in studying Thomas Aquinas one must, of course, always make a distinction: whether a given doctrine is presented as rational or supra-rational. This distinction is not always explicitly made. One derives some help from the authorities to which Thomas refers. Is that authority pagan -- say, Aristotle or Cicero -- or is it Christian? This obviously -- because if it is pagan it stands to reason that this will not be a view based on revelation. But this criterion is by no means decisive. For example, Thomas discusses the question of the existence of God. The authority is the Biblical word, "I am who I am" -- or "what I am" -- and of course Aristotle too has demonstrations of the existence of God. Naturally this distinction is of crucial importance regarding natural law. Is natural law as Thomas Aquinas understands it truly a dictate of natural reason or is it perhaps based, without his knowing it, without his admitting it, on revelation?

The greatest philosophic authority for Thomas Aquinas is Aristotle. Thomas wrote commentaries on many of the Aristotelian works. Aristotle is for him The Philosopher and his commentaries are eminently useful. But of course Aristotle cannot be the philosophic source of Thomas' natural law teaching. In the question dealing with natural law explicitly the authorities are all Christian, but on the other hand Thomas had access to Cicero and indirectly therefore also to the Stoics and he had access naturally also to Roman law, and the Roman law contained a number of references, although not very clear references, to natural law. He also knew directly Plato's Timaeus, which is not very important here, but he knew the other -- the Platonic teaching in a general way partly through Aristotle and partly through Augustine. A certain check regarding Thomas' doctrine is supplied by those Aristotelians of his age who did not accept revelation. They are known by the name of Averroists, after the Latinized name of an Islamic philosopher, Averroes, twelfth century. There were a number of Christian writers, at least nominally Christian writers, who accepted the Averroistic doctrine, especially in Paris in the age of Thomas and later.

I would like to mention here only some consideration why there must be a difference between Thomas Aquinas and Aristotle regarding natural right. First of course, there is no natural law teaching proper in Aristotle. Secondly -- and the other things are substantive -- Aristotle teaches that exposure of infants and birth control are legitimate. Thomas Aquinas denies that, and the reason is the dignity of man as created in the image of God, and there is, of course, no such creation according to Aristotle. This question of the dignity of man in the Biblical or non-Biblical understanding is of the greatest importance up to the present day. I mean, for example, in penal law. The second massive substantive difference concerns slavery. From Aristotle's point of view legal slavery, i.e. the enslavement of men who are not by nature slaves, is simply unjust. Thomas Aquinas, following the Roman law, asserts that legal slavery is just and has been introduced as a benefit of the so-called jus gentium, of the law of nations, and namely it's a benefit because the victor

could very well have killed them -- the prisoners -- and he does them a favor by only enslaving them. The third substantive point, and the last one I mention, concerns a question which I have mentioned before regarding divine worship: that from Aristotle's point of view divine worship is an essential part of civil society and to that extent by nature right where the question of the truth of that worship does not arise at all, and for Thomas Aquinas the question of truth is absolutely crucial. I might take this up somewhat later again if necessary.

Now I must also say a word about the form in which Thomas Aquinas presents his teaching, especially in the theological Summa. Now this form is neither the treatise -- the way in which, say, Aristotle or Hobbes or Locke or Rousseau present their teaching -- nor the dialogue, the form in which Plato and Cicero present their teaching, but the disputed question. This is a peculiarity of the Christian Middle Ages: a form of presentation which reached its maturity, as I have learned from the literature, shortly before Thomas Aquinas but Thomas Aquinas is somehow the greatest master of it. The procedure is roughly this. A question is raised; say, whether there is natural law. And then it goes on -- it seems that there is no natural law. The arguments against natural law are enumerated sometimes with indicating the men who made these assertions, sometimes without. Then it goes on -- said contra -- but against that. And then the assertion is made, there is natural law; ordinarily the bald assertion is reported by an authority. And then there comes the body of the question which begins "I answer by saying" and then Thomas expounds his view coherently and then after having finished that he replies to the objections, point by point. This is the general procedure. Now this is, as I know very well from my own experience -- to begin -- is, of course, completely strange to our habits and to begin with it is very difficult to understand it. For example, when the question is discussed on natural law -- this is, I think, the most convenient example -- this is discussed in question 90. (No, maybe I made a mistake). No, I'm sorry, question 91: whether there is in us some natural law. Now then there are -- three arguments are given but that argument which we would regard as the most obvious, the variety of notions of right in different peoples which is not a moral argument but occurs right at the beginning of Aristotle's Ethics -- is not mentioned. In other words, Thomas does not necessarily start from the primary question. This is, I believe, the difficulty which I always had and only by studying for a long time can one find the places where he takes up the primary questions. And the next article is whether there is some human law. Now where the common sense reaction would be of course there is -- everyone knows there is a human law -- what does Thomas say? "But against the denial of a human law St. Augustine asserts there are two laws, one eternal and the other temporal, which he calls human." So the authority of Augustine is necessary in order to assure the reader, in a way Thomas himself, that there is a human law. Now of course then one has to think about it. Thomas had as much common sense as we have so there must have been some reasons, but very complex reasons, against the possibility of a human law. Only on the basis if one understands these reasons can one possibly understand the procedure. The procedure is not logical in our sense: that he starts from the first premises and proceeds, goes, step by step. But he follows the order, a logical order of the questions, but this logical order of the questions is not the logical order of the exposition. This is, I believe, the great difficulty.

Now the overall structure of the argument in the Summa Theologica is this: consists or was planned to consist of three parts: first, on God, the second, on man, and the third on God having become man, the Christology. The doctrine



of natural law belongs naturally to the second part, on man, and this second part is roughly divided as follows. That is the usual way in which it is quoted. So there is -- the second part consists again of two parts which are ordinarily quoted this way and this way: *prima secunda* and *secunda secunda*. This is the way -- or you can also do it this way. (Writing on blackboard). Now naturally -- these parts are distinguished as follows. Generally speaking, the first part deals with virtue and vice in general and the second part with the particular virtues and vices. More specifically, the first part deals first with an end of man and then the acts leading to that end: (a) these acts themselves, (b), their principles, and the principles are twofold, intrinsic or extrinsic. The intrinsic principles of the actions are power and habit -- power, potentiality, and habit, because virtues and vices are habits. The extrinsic principle is the inclination to the evil from the outside -- that's the Devil -- and the inclination to the good stems from God and God extrinsically affects our action by law and by grace, and hence the subject law comes in in this context. Natural law is discussed, therefore, in this context. Natural right, on the other hand, belonging to the special virtue of justice, is discussed in the *secunda secunda* when he speaks of the virtue of justice as a special virtue.

Now while this rough plan which I sketched here is Aristotelian -- Aristotle discusses first virtue in general before he discusses the particular virtues -- this section regarding laws has no parallel in the Aristotelian scheme and this, I think, only confirms what I have said earlier about the Aristotelian doctrine. Now natural law, to come then to the special subject is a law. Therefore, first we have to raise the question, what is law as such, and second, what kinds of law are there so that we can see how natural law is related to the other kinds of law. So I give you now a brief summary of these questions about what is law as such and what other kinds of law -- questions 90 and 91 of the *prima secunda*.

What is law as such? Now one would assume at first glance, and one must at least try to do that, what he says about law as such would apply to natural law in particular because it's also law. Now we learn then first that law is some rule and measure of human acts. As measuring and ruling it resides in reason, in the reason which makes the law. In other words, law is not reason but law is related to reason as a house is to the building of the house. The law is a product of reason. Now the reason in question is practical reason, not theoretical reason. Law is always ordered toward a common good. The principle of all actions is felicity or happiness. Every part is ordered toward the whole to which it belongs, but every man is a part of a perfect community. Hence, every human being is ordered toward the perfect community. I take this to mean true felicity is the common good of all men, i.e. the common good which constitutes a society embracing all men. Natural law is a law ordering the universal society. This is also what one would expect on the basis of what we have learned from Cicero. Every part is ordered toward the whole to which it belongs: a simple example would be any part of the human body; the hand. The goodness of the hand cannot be understood except in terms of the function it has the body. The third article: only the reason of the community or of Him who is in charge of the community can give laws to the community. An individual, a private individual as such, cannot be a lawgiver. And this would of course imply although it is not explicitly said here that only God can give the natural law. Why can a private man not give laws to other men or why can a man not give laws to himself. The answer given is such commands which a private man gives to himself or others would lack coercive power; Aristotelian reasoning. A private man cannot inflict punishment. This would lead to the

consequence not stated: natural law has coercive power. Transgressions of it are punished, of course, by God. And the last article there: laws must be promulgated in order to have their power. Now the promulgation of the natural law consists in the fact that God has imprinted it on the minds of men so that they can know it by nature: naturalite.

The next question, number 91, deals with the kinds of law, and the kinds of law are those: eternal law, natural law, human law, divine law. By the way you find this whole view with some modifications but substantially the same in Hooker's Laws of Ecclesiastical Polity because I believe most of you don't read Latin. Most of you don't read Latin. Is this -- you seem to protest? I believe it is a reasonable assumption. And then you have to depend on translations and that is not -- is not so good. But Hooker is an English writer and a wonderful English writer and then you will have great enjoyment in reading him. Now the eternal law is, one may say, Divine Providence itself. The world is ruled by Divine Providence, i.e. it is governed by Divine Reason. This governance is the eternal law. The eternal law is God Himself. Thomas makes a distinction between the eternal law and natural law, a distinction which was not made by the Stoics. The natural law -- the question arises first why is there any need for it given the fact of Divine Providence or of the eternal law. Answer: man is subject to Divine Providence in a special way. He participates in Providence. He has been created so that he can provide -- Providence, provide -- for himself and others. The natural law is therefore a participation in the eternal law on the part of a rational creature. The human law is derivative from the natural law, i.e. it is not simply natural but derivative from natural and this way of derivation we must discuss later. The Divine Law is also, in a way, derivative from the natural law but it originates not in human will but in Divine Will; and a Divine Law is needed because man has also and above all a supra-natural end, whereas the human law is concerned only with the happiness of this life. There is a twofold Divine Law, namely that of the Old Testament and that of the New Testament, and the relation is understood in the Christian way: the Old Testament belongs to an imperfect stage of man -- as it were, childhood -- and the New Testament to the perfect, to manhood.

Thomas discusses then in the next chapter the effects of law. The effects of law is, as Aristotle had said before, to make man good. But here certain difficulties arise. Let me see. Yes, the acts of laws were described by an authority as commanding, forbidding, permitting and punishing. And then it is said, "Just as a man is incited to the good by punishment so also sometimes by rewards. Hence, if punishment is said to be an effect of law rewarding also should be one. Furthermore, it is an intention of the legislator to make men good but he who obeys the law only out of fear of punishment is not good. Hence, it should not be a peculiarity of the law to punish." Now how does Thomas answer to this objection? "It is quite true that rewarding may belong to someone but punishment belongs only to the minister of the law by whose authority punishment is inflicted and hence the act of law is not said to be rewarding but only punishing." In other words, rewarding can also be done by people other than people authorized by the law for that purpose. Punishment is limited to them. The other point: "by that fact that someone comes to get accustomed to avoiding evil and doing the good out of fear of punishment he is sometimes brought to do it pleasantly or out of his own will and in this way the law leads by punishment to that final result that men are good." So punishment is a genuine and legitimate mode of law. Law has to a certain extent a punitive character.

Now we come now to the question of most importance to us: the precise re-

lation of natural law and human law. And Thomas starts from this overall view: there are principles of practical reason just as there are principles of theoretical reason. And the principle of theoretical reason is being and the principle of practical reason is good, but for men this is, of course, specified: the human good and the human good is to be determined according to the nature of man. That which is by nature good for man is something to which man has by nature an inclination. This is a classical premise of Thomas' teaching. Now let me read to you something: the key passage. That is in question 94, article 2.

Since the good has the character of an end and the bad the character of the opposite [namely, of something to be avoided] it follows that all those things toward which man has a natural inclination reason apprehends by nature as good and hence as to be pursued indeed and their opposites as bad and to be avoided. According to the order of the natural inclination is the order of the precepts of natural law. Man has, in the first place, an inclination toward the good according to the nature which he shares with all beings insofar as every being strives for its preservation according to its nature.

Meaning a horse does not merely desire to be alive, but to be alive as a horse; just as we, when we speak of self-preservation -- we mean, of course, our preservation as human beings.

And according to this inclination there belongs to the natural law that by which the life of man is preserved and the opposite prevented. Secondly a man has an inclination to some more special things in accordance with the nature which he shares with the other animals and according to that those things are said to belong to the natural law which nature taught all animals, as is the conjunction of male and female, the education of children and similar things. In the third place, man has an inclination to a good according to the nature of reason, which is peculiar to him [meaning, in contra-distinction to the other animals] just as man has a natural inclination to that that he knows the truth about God and to that that he lives in society. And accordingly to the natural law there belongs that which refers to such-like inclination: namely, that man avoids ignorance, that he does not offend others with whom he has to live, etc.

So this is the key passage calling the natural inclination in Thomas Aquinas' three-fold one as you have seen. So for all practical purposes the key point is man has a natural inclination toward society. Man is by nature a social being. This does not mean; however, that man has a natural inclination to this or that particular polis, city. I read to you a passage here somewhat earlier: prima secunda, question 60, article 5. (No, one second, you must excuse me -- one more second. I'm sorry. No, it is in the first part of the Summa which I do not have with me. I'm sorry.) In the first part of the Summa, question 60, article 5, where you find a discussion which implies that the natural inclination toward society is not the same as the natural inclination toward the polis as Aristotle understood it.

But the more specific points, to which I must come now, are those. The reasoning underlying natural law has, in a way, the same character as theoretical reasoning. There are principles, axiom-like, in each case, and conclusions. So, for example, if it is something like the principle "Society is good" it



follows, of course, that everything which is as a matter of principle conducive to society is good. But whereas in mathematics the conclusions are as certain as the axioms the same is not true here. The more specific the conclusions are the more are they exposed to exceptions. Now common sense would easily show that. For example, the conclusion, let us assume, "Society requires peace" and "Peace requires that everyone knows what belongs to him and what does not belong to him." Property. Now if property there must be prohibition against theft and robbery and this kind of thing. There must also be, given the fact of the mutual need of men, some possibility of borrowing and lending and rules against that, and more specifically, rendering of deposits. And now we know, all, the famous example: if the deposit was a gun and the owner has become insane in the meantime it may be positively unjust to do what ordinarily is just: namely, return a deposit. May I mention strictly in parenthesis the following point. In the medieval literature of this kind I, for one, am -- I'm not very familiar with it but I have a certain knowledge. I'm struck by the fact that very few examples -- identically the same examples -- are used all the time by all writers. In other words, there is no need for variety. For example, when they discuss a parallel to reason, an analagon of reason in animals, a kind of instinct, that the lamb is attracted by her mother and repelled by the wolf, this example occurs in every writer whenever the subject comes up. No one ever thought it necessary to vary a bit. This is, I think, one characteristic of scholastic literature, but this only really in passing.

Now to repeat, the key point then is that according to the Thomistic teaching the principles themselves and the highest conclusions are universally valid, but the more you step down the more they are qualifiedly valid. The principles are never changed but some conclusions are of qualified validity. All human law, human law, is a law to the extent to which it is derived from natural law. That is the key teaching. But there is a twofold derivation: the first one as conclusion from the principles and the second by way of determination, as Thomas calls it. Now conclusions are similar to scientific demonstration and determination is similar to arts. For example, someone has the art of house building; the determination to build this house of this shape on this ground etc., rather than another: this is a determination which is not given with the art as such. This is an act, a special act, of the will. The human law derives from natural law either by conclusion or by determination. One could wonder why a conclusion from natural law should not still be natural law and not human law, as Thomas says. I believe he means this as follows: if you take a relatively remote conclusion from natural law, something which in itself is strictly natural, it would not be known to the majority of the people as the highest principles: like the prohibition against killing is known. So that it owes, in effect, its validity to having been promulgated by the human legislator. That, I believe, is the way in which he understands that.

Now the most important question, of course, concerns the mutability of natural law. Thomas denies -- yes, mutability of natural law. And he discusses this question especially in the section concerning the old law, i.e. the Old Testament law. The Old Testament law includes moral precepts in contra-distinction to the ceremonial and judicial precepts, and according to the Christian teaching, while the ceremonial and judicial precepts have become abrogated with the coming of Christ the moral precepts are valid. All moral precepts of the Old Testament belong to natural law and the moral principles are, sufficiently for all practical purposes, conveyed through the Ten Commandments. But not all ten commandments are, strictly speaking, of natural law: for example, not the prohibition against idolotry and against taking the name of the Lord in vain.

These prohibitions require super-natural illumination, as does the law regarding the Sabbath. Now there is a passage which I thought I should read to you: question 100, article 8, the first objection.

The precepts of the decalogue are of natural law but what is by nature just is deficient in some things and mutable, just as is human nature, as the Philosopher says in the 5th book of the Ethics. This is the passage on natural right which we have here discussed. But the defect of the law in some particular cases is a reason for dispensing meaning, for allowing the opposite, as has been said before. Hence, in the precepts of the decalogue dispensation may take place.

Now Thomas denies that any of the ten precepts can be dispensed with. There is perhaps a passage which I should read.

The intention of every legislator is ordered primarily and principally to the common good, secondarily however to the order of justice and virtue according to which the common good is preserved and arrived at.

This is a statement in itself in absolute agreement with Aristotle, but I think it also shows the difference between Thomas and Aristotle. For Aristotle there is a possibility that the principal intention of the legislator, namely the common good, and the secondary intention, namely the order of justice and virtue by which the common good is preserved and arrived at, do not simply agree: in the famous cases of necessity, where the common good, the preservation of the society in particular, may require deviation from what ordinarily is just. Thomas, of course, allows some form of dispensation but this is only, strictly speaking, divine dispensation, and the case, for example, of Abraham commanded to kill his son, Isaac, which would seem to mean a case of homicide, is not homicide because, according to Thomas, Isaac was condemned to death by the very fact of original sin and therefore that is not an act of commanded homicide. Whether this is sufficiently convincing is another question. No, I mean this seriously: I mean, whether this is an argument which is defensible on the basis of natural reason alone. But this leads to an infinite question. I only mention it as one point at least where the question of dispensation of the principles of the decalogue is discussed by Thomas.

Now a word about the sanctions for natural law in the Thomistic understanding. I have inferred from the general definition of law that transgressions of the natural law are punished and punished by God; for since surely man is not the giver of the natural law and punishing belongs to the law-giver natural law would seem to be sanctioned by divine rewards and punishments. Thomas specifically fights the error of Maxion (?) and Valentinus, famous scholastics, that God does not punish or, in other words, that there is a good God in contradistinction to the just God, the lower God, who punishes. So God does punish. And he also -- Thomas speaks then of the order of rank of punishments. The gravest punishment is exclusion from beatitude; secondly, deprivation of virtue; third; bodily harm; fourth, love of external goods. Bodily harm including also death, naturally. It is of the essence of punishment not only that it deprives us of some good but also that it is contrary to the will of the transgressor. Do you see that? I mean, do you understand that? For example, if someone -- well, you know such cases, perhaps from folklore; I know them. In rural parts in Germany the fellow -- the shepherd who was unemployed during the winter liked to have a heated home and he committed some minor thing and so he spent the winter well-heated in the local jail. You know, so this punishment

deprived him of some good, liberty, but it was not contrary to the will of the transgressor. So a true punishment should fulfill two conditions.

Now the practical meaning is this: some men do not estimate the good things according to their true order. They do not mind loss of eternal felicity in which they do not believe, but they mind very much capital punishment, and so on. Hence, they believe that God does not punish crimes in the famous fact of the prosperity of the wicked and the misery of the good. They do not know what Thomas asserts is the case: that worldly prosperity may in itself be a punishment in the form of a temptation to greater sin. The main point is this: the essence of punishment is the loss of the highest goods, not that the punishment is against the will of the transgressor. This is Thomas' final decision. After all, some people wish to undergo punishment not because they are so-called masochists but because they feel that they are guilty and they deserve punishment, and still that would not affect the fact that they deserve punishment at all. Nevertheless, punishment must be punishment also in the mind of the sinner or transgressor. And now but if you take a certain kind of man one can very well assume that he is in no way affected by that -- by the fact that he deserves punishment. The sinners must necessarily be punished in a way which the sinners fear. Hence, the threat of eternal fire in Scripture. This is Thomas' refutation of the error of Algasel (?), an Islamic philosopher who had said that there is no other divine punishment except loss of the ultimate beatitude. So this would seem, then, to be the sanction of natural law in one way or the other. But the following question arises: is this punishment knowable to human reason? What does human reason know about the immortality of the soul? There was a great quarrel among the Aristotelians of Thomas' time whether Aristotle taught the immortality of the individual soul or rather intellect or whether he only taught the immortality of simple intellect. Thomas Aquinas is sure that Aristotle taught the immortality of the individual intellect. I will take up this question of the sanctions of natural law -- that became crucial later on in the thought of Locke -- I will take it up in this context. But this is still a question which is by no means settled by the few remarks I made; I will take this up next time on the basis of a later commentator of Thomas Aquinas. Is there, strictly speaking, a sanction for the transgression of natural law? This I will take up later. The inference from the way in which Thomas discusses the subject in the *prima secunda*, namely that when speaking of the essence of law he speaks of punishment as an essential part of it, speaking of law in general, would be that this would apply to natural law in particular. But maybe that's a hasty conclusion. Now I must here make a stop so that we have a few minutes at least for a discussion. Next time I will then discuss Suarez, who is the most famous -- perhaps the most famous commentator on Thomas Aquinas -- because he takes up the question of the sanctions of natural law very specifically. And then I will discuss some medieval alternatives to the Thomistic teaching, Duns Scotus and Marcellus, and then we will turn, perhaps next week, to modern natural right. You must not forget we don't have too much time anymore. Yes?

Q: Can I ask a question about Cicero?

S: It's also dark in Cicero whether there are any punishments except those inherent. You know? If someone degrades -- becomes a degraded or debased human being by committing a certain action or various actions of a certain kind that's all there is to it. I mean, in other words, that he may be shunned by his fellow men or even worse than that -- this is not an essential effect -- you know, because it may not become known to the others. So you know, there is



no effect beyond what you do to yourself, to your soul. That I believe is the Ciceronian and possibly also the Thomistic view, but I'm not so certain of that.

Q: But the question I wanted to ask on Cicero is more his relation to Plato. He seems to me to be not quite as similar to Plato as has been remarked because in many passages he talks about the superiority of the man who having studied human affairs then comes back and rules -- his superiority of the man who combines knowledge and practical experience to the man who either relies on practical experience or intellect alone. Those passages would seem to indicate that the philosopher will return to the cave and if he does that that sort of life is superior to the life of --

S: At least officially that is, of course, what Plato says in the Republic, only in Plato's case it is bound up -- this return is bound up with the quality of the polis to which he returns.

Q: But in fact Plato would say that the life of the philosopher is superior and he does not want to return, whereas Cicero seems to argue that --

S: Yes. Quite clear. Emphatically so. Yes, sure. But still that does not necessarily -- is not necessarily a fundamental question because if -- when you have this -- the question of the theoretical and practical life -- it means what kind of practical life. Now a practical life completely devoid of philosophic guidance or a practical life guided by philosophy? Now clearly Cicero is in favor of the practical life guided by philosophy, but the guiding is essentially higher than the guided. Would you admit that? The directing thing is philosophy. The directed --

Q: But the statesman-philosopher is a superior human being to the philosopher simply.

S: Could still be, but then within him that guiding thing is philosophy. Yes? To that extent there is agreement. Yes. I don't deny the importance of your question, but it is not the primary question. The primary question is the order of rank between theoretical understanding and practical understanding and there Cicero agrees with Plato and Aristotle. Yes?

Q: Does Plato admit the validity of practical knowledge and if so -- if not, does Cicero in fact admit the validity of practical knowledge as such or, in another way of putting it, of the moral virtue which Plato doesn't?

S: Yes, well this is the point. You see, the teaching on the virtues which Cicero gives in De Finibus, which is the chief work on that, is what I said before. That is a modification of the Stoic teaching and that means there is no moral virtue, i.e. virtue consists of the four cardinal virtues, as they came to be called: wisdom, courage, temperance, and justice. They are impossible -- the others are impossible without wisdom. Wisdom means here theoretical wisdom, not merely the Aristotelian prudence. That is the characteristic -- I mean, very schematically one can say, and please don't quote me for that is only a slight help, moral virtue is a peculiarity of Aristotle. Plato does not know moral virtue as moral virtue. What Aristotle calls moral virtue is for him vulgar virtue, not genuine virtue. Genuine virtue is inseparable from philosophy in the individual. You know, that the virtuous man -- man is virtuous to the extent to which he is philosophizing. All his acts of courage, temperance, and so on, are either genuine or spurious. If he is not a philosophizing man

they are spurious, which doesn't mean that these imitations of genuine virtue are not of very great practical importance. Of course they are, but they are questionable. You can easily understand it from -- if you compare the Platonic position with the religious position: that from a religious point of view the decency of unbelieving men is, of course, better than if they were indecent but it is fundamentally a leaky vessel and what religion says from a religious point of view Plato says from a philosophic point of view. Now in the Stoics -- that is very close to Plato. I mean, it lacks the soaring and uplifting quality of Platonic statements, naturally. But baldly stated, man's goodness consists in the possession, in the practice of these four virtues and no one can practice them who is not a sapient, a wise man. But a wise man means theoretically wise. The Stoics assert that logic, dialectics, physics, are virtues. They are as much virtues as justice and temperance is virtue. So a man deprived of them is, of course, better -- I mean, deprived of wisdom who is in the ordinary sense of the word decent -- is, of course, preferable to a traitor and what not but he is not, strictly speaking, a good man. In that respect I would say they agree.

Q<sub>2</sub>: Well, is the fact that the Stoics expect, somehow, all men to have this requisite wisdom and it doesn't seem to me that Plato does. In other words, for Plato certain men are to be truly virtuous and for the Stoics all men are.

S: Yes, well let me put it this way: there is something to that and I believe I also mentioned it. When one reads Plato, especially the Republic but also the other writings, one sees sooner or later that in Plato's view only relatively few men can be philosophers. When you read the Stoics you get the impression that this teaching is addressed to all men, which would seem to imply that all men can become sages if they only want to, but it is never explicitly said and I would say there are quite a few statements in Cicero which make one doubtful that the Stoics believed that wisdom is possible for every man. But clearly this great question of the equality or inequality of all men regarding virtue is not discussed emphatically by the Stoics, both in Cicero and in the later Stoic writers as well as in the fragments, whereas this question is emphatically discussed by Plato. That is quite true. Yes?

Q<sub>3</sub>: The confusing thing: there seems to be a contradiction between, say, that famous passage you quoted on which some people take it to demonstrate natural equality. In that passage it says that in the capacity to learn, reason is invariable in all men. . . .

S: Yes but --

Q<sub>3</sub>: . . . in another passage in the third book of the Republic where there is the existence of natural slaves admitted.

S: Yes, and surely -- yes, and quite a bit. I have discussed this very briefly in my study on Natural Right and History and if you would look up all the footnotes which I have here you would get the more important evidence, but I have been blamed for this practice. But otherwise -- I think I am familiar with the question. By the way, in that context Cicero says all men are equal as to the capacity of learning. This is an ambiguous statement. That may mean all men are equal insofar as they can learn, but it does not necessarily mean that all men have the equal capacity of learning. A little bit later in the same passage he says that there is no one in any race who cannot acquire virtue if he has found a guide. Now obviously that's an allusion to inequalities.

Some can find virtue without a guide and others cannot and it depends how much of a guide. I have no doubt that Cicero took the inequality of men in this decisive respect for granted and the only passage which raises a doubt is this passage in the Laws which became a cornerstone in the history of political thought through its misuse by the brothers Carlyle. You know, the brothers Carlyle who wrote the six volume work on the history of political thought in the West and they have this very charming simple view that there are three periods in the history of political thought: first, of course, Plato and Aristotle and then from the Stoics up to the French Revolution included and then Burke and the historical sense of the nineteenth century. That is, I believe, what they mean. And now why is there this unity? Because in this period belief in natural law and that means belief in the equality of all men and this was obviously the basis of the French Revolution or of the Declaration of Independence. You find such texts in the Roman law text and you find it, according to Carlyle, also in Cicero; namely in this passage. And this had all to do with the fact that Alexander the Great destroyed the Greek city. Yes, please?

Q<sub>4</sub>: (Inaudible question regarding Plato).

S: Yes, that is a very good question, a very good question; and there is a passage in the Timaeus, by the way, in which -- the only passage, I think, in Plato -- in the Literature prior -- I mean, in Plato or Aristotle where natural equality is presented as a just demand on God: that God could not justly have created men unequal. There is a passage in the Timaeus to this effect and this deserves careful discussion. The answer to your question I believe is simple. According to this mythical doctrine of Plato -- you must not forget, that is not literally true -- man is distinguished from the brutes by the fact that his soul has seen the ideas prior to becoming embodied, literally, incarnated. Yes? Has seen the ideas. In English it means man is a being which possesses an intellect, an intellect, the intellect being directed toward the ideas. To that extent all men are equal. But then they become embodied and by this very fact inequality arises. That's the point. I mean, again, you must not merely treat the Platonic dogmas which are frequently, if not in all cases, absolutely paradoxical and repelling for this reason; but one must think of the experience, of the empirical observations which Plato had in mind. Now there are people, for example, who are -- have such strong bodily desires which keep them always in a distracted form. How can they think? There are other people who are so fearsome of all evil things, whether they are mosquitoes or graver things, that they are constantly preoccupied with worries and fears, constitutionally. Now they can do something about it, but even if they do the most about it the net result will be inferior to people who have a happy temperament by nature. And I think Plato presents that happy blend in its most perfect form known to him by Socrates. That is, I think, the meaning of this famous demonic thing which Socrates possessed: that he was the man most fitted by nature for philosophizing. His body was perfectly obedient. He could drink more than anyone else and still remain sober, for example. In other words, his thinking capacity could not be impaired by anything which he -- on the day of his death where people normally are distracted Socrates was the only one present who was not distracted so that he could quietly comfort the others about the loss which they are about to incur. That is Plato's view; and that this has to do with the body of Socrates is indicated by the many references to Socrates' strange body. It was not exactly a beautiful body, as we learn, but on the whole the mixture was perfect. You can say, the inequality of the intellect has to do -- has its root, in a way, in the bodies very strangely. That is even taught somewhere in Thomas' Summa Theologica. That was the older view, Mr. Dutterworth.



Q5: (Regarding the fact that Thomas had knowledge of the Timaeus but not of other Platonic dialogues).

S: Yes, well -- yes, I said that, but come to think of it that the Timaeus was translated into Latin and was always known in the Christian Middle Ages. The Republic was translated only in the fifteenth century into Latin so it was unknown to him. Now there were some other dialogues which were known -- I forgot -- the Phaedo and so; I do not know exactly.

Q5: It's very clear that he certainly didn't have the corpus though.

S: No, no. That's clear. And the most interesting from the point of view of political philosophy: the Republic was unknown in the Middle Ages and became known only -- in the West -- became known only in the fifteenth century. Therefore what Thomas knows of Plato -- his political views -- he all knows from the second book of the Politics, from Aristotle's criticism. Yes?

Q5: Could you very briefly give an account as to how that affects his view of natural law?

S: Well, in this general way -- no, I do not believe that this -- well, if you add to this the fact that Aristotle became powerful in the West also only from about 1200, roughly -- the logical items were earlier known but the others came to be known only about this time. There, of course, there was the philosophic tradition as directly known -- was that supplied by Cicero and other writers of this kind including Roman law and Plato and Aristotle were absent, so to speak. That one can very roughly say, but it's too rough.

Q5: But on the other hand Aquinas certainly had this knowledge of Aristotle.

S: Sure, sure.

Q5: So just to try and balance the differences between knowing Aristotle and not knowing Plato --

S: Yes, well, you see the point -- a man of the first order like Thomas doesn't need so many texts as we poor people need. For example, in the Roman law texts, in these very few and sparse texts, there are two different notions of natural law or natural right: one roughly corresponding to what the Christian tradition says and Thomas in particular too says, but another one says natural right is that which nature taught all animals. According to this view all specifically human things do not belong to natural law and the simple inference from this passage would be they are based somehow on establishment. Now this alone could induce a thinking man to develop an argument even if it was not known to him from the greatest texts. Good. Mr. Erikson.

Q6: (Regarding the distinction between the gang of robbers and civil society considered from the point of view of Robin Hood).

S: Yes, that does not -- because here it is clearly perhaps a misguided notion of justice but surely a notion of justice, whereas the other thing simply says justice is a necessary evil for any people cooperating in an enterprise. That's all there is to it. But Robin Hood had a much loftier notion of justice. He felt that he should correct the deficient justice available in human society and to do it by means which are not just, i.e. legal. That is, I think, if I

understand it correctly, the same what Perry Mason does once a week when he breaks and enters into houses to get evidence in order to help an innocently accused man. Is this not the same kind of thing? And I think Perry Mason is really a very great representative of justice. You know? His trembling friend, Paul, of course doesn't have the stamina for that. That's a different case. So then we will discuss next time the rest of the medieval things.

Lecture 12: November 14, 1962

"... inclination to sin and therefore sin is by nature good for man. But Aquinas, of course, would deny that sin is by nature good for man. Hence, it seems that his definition of what is by nature good for man is meaningless." Well, it is not meaningless because he makes a distinction between natural inclinations and perversions of these inclinations and therefore this difficulty disappears unless it is impossible to make a distinction between natural and perverted inclinations. But if I -- just without going into any deeper question; when people speak today of perverted people, say sexually perverted people, they still agree with Thomas' view that there are natural inclinations and perverted inclinations. So this difficulty doesn't exist. Second, "Would you please explain what you were saying in your last lecture about determination and conclusion; that is to say, about the relation between natural law and human law?" Well, I can only repeat what I said. According to Thomas Aquinas all human law is based on natural law but there are two ways in which human law is derived from natural law. The one is by conclusions; simply deductive conclusions. And the other is by way of determination. That is to say, when natural reason would not decide either way, then competent authority picks one of these two or more ways. Left and right driving: that would be determination. Now the difficulty concerns conclusions. Are not conclusions from natural law themselves part of natural law and therefore not human law? And I believe the answer one has to give is this: they are indeed -- belong to natural law in themselves but for the majority of men, at least, they lack the evidence which the principles of natural law have and therefore they acquire their authority for the large majority of men only by becoming commands of the human legislator. Now Mr. Glenn, I don't see you. Is this a sufficient answer?

O: (Inaudible).

S: I do not have the intention, but if you can rephrase your objection, then I will do that.

O: Well, my problem is this: how are we to know natural law except by observing man as man, observing men, and if we observe men as men and not as individual men but just as the genus man, we observe a                      all right. Now, how do we know whether these things are the natural law or the perversions of the natural law?

S: In other words -- I see. If you understand observation in the sense in which Mr. Kinsey understands it -- you know -- then of course you do not get any guidance. You find so and so many percent are normal and so and so many percent have this so-called perversion and so on, and they are not, strictly speaking, perversions. The one is as good as any other. But Thomas means, of course, while observation is the starting point of any understanding, we arrive eventually at an insight into what constitutes the essence of man, the nature of man, in contra-distinction to other living beings. And then the result is man is that animal which possesses reason or speech. He is an animal, but he is an animal distinguished from the others by possessing speech. Now qua animal, for example, he is in need of reproduction as the other animals too are, and therefore, say, all sexual activity which is directed toward reproduction is natural, and that which is not is, at least, a problem. I mean, this problem is complicated because there can be people who are perfectly normal but, for some reason or other, they are unable to generate children. And this



creates a certain complication because in this case the function of marriage for the generation and upbringing of children cannot be fulfilled and nevertheless it's a valid marriage. This creates certain difficulties, but this is, you can say, the exception. The normal is that people marry in order to have children and bring them up and whatever deviates from that is to a lesser or greater degree a question. Now these deviations may be perfectly innocent, like if people happen to be childless without any fault of their own, and it may also be a serious matter, like the well-known cases, I believe today very well-known cases, of perversion. So, in other words, without a guidance by a notion, an understanding, of what is man's nature the whole doctrine would be impossible. Not everything is equally natural; whereas the modern view, the ordinary modern view, is one thing is as natural as everything else. Do you see that. So this is then, surely, the crucial premise.

O: That clears up the problem.

S: Well, I spoke of this notion of nature right at the beginning because the whole tradition of natural right, however understood, is based on this notion of nature as specific natures and this implies, from the very beginning, that not everything that is is natural; and the fundamental case is, of course, the distinction between natural things and artifacts -- a chair doesn't grow as a dog grows or a plant grows -- and, above all, nomos or convention, which is not natural. And, whereas according to the view which is very powerful in modern times, perhaps the predominant view, everything that is is natural. I hope to touch on this modern view when I come to speak of modern natural right. Yes?

Q<sub>2</sub>: Besides these two distinctions which you make between nature and art and nature and nomos is this distinction between nature and perversion equally --

S: No, that is another distinction. In other words, a perversion is not as such artificial nor as such conventional. Take a simple case: if man has by nature five fingers on each hand. Well, sometimes a man is born with four fingers. As Aristotle puts it in general terms, the natural things are as they are not necessarily always but most of the time. Most people have five fingers at least, but there are some deviations from that. This kind of deviation is not due to art or convention, but due to a defect of nature.

Q<sub>2</sub>: My question is --

S: By the way, the more simple case -- we don't have to go to that man with four fingers. Disease is a natural disturbance of man's nature. It is a disturbance in spite of being natural.

Q<sub>2</sub>: This distinction between natural and perverted: is it equally as fundamental as the other two distinctions, including these as separate, or is it derivative --

S: Well, surely one can say if nature is understood as the character of a being, then this is understood, in the first place, in contra-distinction to any artifact as well as to convention, and at the same time, of course, it is also understood with a possibility of deviations, of natural deviations. Yes, I think we can leave it at that. Good.

Now then I will briefly repeat the main point I made last time and then go on. Now, I had asserted that Thomas Aquinas' doctrine of natural law is the

classic form of that teaching and the starting point is, indeed, that man has natural inclinations: inclinations toward the things which are by nature good and, in particular, good for him. And there is a three-fold inclination which has an inner order: the lowest is that which man shares with all beings, with all living beings, and the others, the higher ones, are those which are peculiar to him. For example, self preservation he shares, surely, with all living beings but in the case of man self preservation is subordinate to the common good because man is by nature a social being.

At this point there arises a certain difficulty to which I would like to draw your attention. In the first part of the Summa, question 60, article 5, we read: "It is the sake of the virtuous citizen that he exposes himself to the danger of death for the preservation of the whole commonwealth, and if man were a natural part of this particular society this inclination would be natural to him"; i.e. the inclination toward society is natural but the inclination toward this particular society to which he belongs is due to habituation. It is not natural. Well, this, I think, is of some importance in order to understand it properly. That is clearer, one can say, than it is in Aristotle.

Now the next point, I have to repeat again, is that the principles of natural law are immutable and cannot be dispensed with by any authority, not even by God. The principles of natural law, as far as they concern society, are identified with the second table of the decalogue: the prohibitions against murder, theft, and so on. The difficulty which we have touched upon concerns the sanctions of natural law. Now there is a natural inclination toward the things which are by nature good, but these natural inclinations are, of course, not the virtues. The virtues are, generally speaking, those habits which enable man to do what -- in order to achieve these ends. Say, society is the end. The social virtues are those habits which enable men to live in society. So the virtues are founded upon the natural inclinations. The virtues are perfections of man's nature as a rational nature. The question arises, is there a natural inclination toward virtue? Now Aristotle surely had asserted that there are people who are by nature inclined toward virtue, but not all. And these are what they would call the good natures, not in the sense of good natures as used now but men who possess good natures as distinguished from others, and that is also what Plato means. Surely virtues are demanded from men, which is not the same as that there is a natural inclination toward virtue. This distinction which I made here and couldn't help making between natural inclination toward virtue and virtue as demanded from men leads to a difficulty which was later on, in a way, solved, if one can call it a solution, by Kant. Kant abandons the notion of natural inclinations altogether in favor of the moral law. The moral law has nothing to do with men's natural inclination. In brief, the fundamental alternative is this: is the good life the life in accordance with the nature of man or is the good life demanded from man? According to Thomistic doctrine it is both.

In order to clarify the question of the sanctions I would like to turn to a later Thomistic author, a very famous man, Francis Suarez, a Spaniard of the early seventeenth century. Now Suarez had in front of him not only Thomas, who is his guide, but also quite a few critics of Thomas, or interpreters of Thomas, and also he was, naturally -- that was the time of the counter-reformation so the great Protestant revolt was, of course, known to him. His book has the title, On Laws and God The Legislator. He fights against two fronts, as far as the natural law teaching is concerned. One front, one school which he fights, says that nothing is good and bad intrinsically but only qua commanded or

forbidden by God. This is a very old question -- the Platonic dialogue called Euthyphron where this question is discussed in this form: do the gods love the just because it is intrinsically just or is the just just because the gods established it as just? This is fundamentally the same question. The other wind against which he fights says the realization that something is intrinsically good or bad is the natural law. In other words, the natural law is the same as natural reason, a view to which you find an allusion, incidentally, in Locke's Civil Government, somewhere. So no extrinsic cause outside of man's natural reason is required for making it a natural law. You remember that in the Summa Theologica law was introduced as an extrinsic cause of the goodness and badness of human acts. According to this view no such extrinsic cause is needed because man's natural reason alone determines sufficiently what is good and bad. And this view is then also stated as follows -- this view attacked by Suarez: the natural law only indicates, points out, indicans; it does not proscribe. Even if there were no God or God were not an intelligent being, which is impossible, there would still be a natural law in this sense: namely, natural law pointing out what is intrinsically good and what is intrinsically bad. Another later Scholastic, also a Spaniard, Vasquez, probably means the same thing when he says -- when he denies to natural law the title of law and would speak only of use of right. You remember: I spoke of this distinction more than once between natural right and natural law. In natural right the element of command is not necessarily present, whereas when we speak of law it is necessarily present.

Now Suarez opposes these two schools and argues as follows. Reason as reason, i.e. human reason, does not by itself have the proper effect of law. Reason as reason is not, strictly speaking, legislative. Law must go back to a being which possesses imperium, the right to command. The cooperation of intrinsic goodness and badness with the extrinsic command constitutes natural law, i.e. the will of God makes the intrinsically good or bad commanded or prohibited. And I think that is a clear statement of what Thomas has in mind, and you see also how it is opposed to both camps: to those who say God's command alone makes natural law and the others who say no command of any kind is required. Cooperation of intrinsic goodness and badness with God's command constitutes natural law. The natural law is sufficiently promulgated by the fact that it indicates not only the intrinsic goodness or badness of the acts in question but also that God takes offense at transgressions. In other words, we know by our natural right, by reason, not only, say, that indiscriminate killing is bad, but we know also that God takes offense at it.

In this connection there is a passage in the Summa which is helpful for the understanding. In the prima secunda, in the first part of the second part, question 71, article 6, ad quintum (?) to the fifth objection, he says: "But the theologian's sin is chiefly considered insofar as it is an offense against God, but by the moral philosopher sin is chiefly considered insofar as it contradicts reason." I think a very revealing and interesting passage. The point of view of rationality is in the foreground of philosophy. The point of view of offensiveness to God is more at home in theology.

Suarez uses a similar distinction; that between sin and guilt. Now let me explain this. The term sin, of course, does not necessarily mean what is meant to be now, where it is used in contra-distinction to crime and a sin is, so to speak, essentially religious and crime is not. Sin, peccatum (?) is a translation of the Greek word hamatena (?) and that does not necessarily mean sin in this emphatic sense but any mistake, error, and especially also error in action. Now this theme of peccatum, hamatena, error, is the philosopher's con-



cern, but guilt in the sense of an offense to God is the concern of the theologians. So it is clear, then, as far as the question of sanctions is concerned, that according to Suarez natural law stands and falls by being grounded in God's will and by being the concern of God. But one thing is the essential relation of natural law as law, properly understood, to God; another thing is the relation to divine punishment, and here Suarez clarifies the situation very much, beyond that what I, at least, have found in Thomas Aquinas himself.

The transgression of natural law implies that one deserves to be punished but not more. The actual infliction of punishment is not possible without determination of the quantity and the mode of punishment and this determination cannot be effected by natural law so that punishment proper goes beyond -- I mean, the character of punishment proper goes beyond natural law. On the basis of the insight implied in natural law there is not more than worthiness of punishment. Everything else goes beyond that.

Now I would also like to say a few words about the question of the changeability of natural law, the question which was brought to our attention by Aristotle's remark in the fifth book of the Ethics and to which we have returned more than once. Now I discuss here an example discussed by Suarez: incest between brother and sister. This is forbidden by natural law, but it is forbidden not absolutely and the Biblical examples of incest at the beginning -- I mean, they are not spelled out but they are obvious from the Biblical account of the first generations -- show, suggest, that incest between brother and sister may be innocent. Now how does Suarez solve this difficulty? Incest between brother and sister is forbidden insofar as it is damaging to human nature and therefore contradicting natural virtuousness according to right reason. But this reason ceases and this relation begins to be matrimony in agreement with nature and hence virtuous in such situations in which there is no other way of procreation of the human race except through such a relation, because if this marriage of brother and sister is undertaken alone for the sake of the conservation of the human race, not possible in the circumstance in any other way, then it becomes a legitimate and moral action.

Now this is exactly, I think, an example of what Aristotle, in my opinion, means when he says there is no natural law prohibition which is not subject to qualification in extreme cases. But I must say I am sure that Suarez would not extend this to all cases. He would only allow it in this particular case of incest between brother and sister and probably not in the case of incest between parents and children, which would be a different story. But this is only an illustration of the reasoning which I believe is underlying Aristotle's otherwise so strange remark that all natural right is changeable.

Q: (Regarding Lot and his daughters).

S: Yes, this was not discussed by Suarez and I don't think by Thomas. At least I haven't seen it. I believe Locke discusses it in the Civil Government somewhere in the first part. Yes, well, the question would simply be was there no other way -- this is what the daughters say to him -- yes. Now one would have to consider the same thing: that they might have said the thing that is not. But I would say -- I mean, I can't possibly dare to speak for Thomas Aquinas -- but I would say, as I understand Aristotle, he would say that such extreme cases, say of shipwrecked people on an island, the prohibition against incest between father and daughter or mother and son would cease. I believe so; because otherwise his unqualified statement that all natural right is

changeable wouldn't make sense. . . . The principle would be as I have stated before at an earlier meeting: extreme cases always will allow for exceptions. And it is of relatively little use whether you say, for example, that the man who takes away stealthily what belongs to another man because the only alternative would be starvation -- whether you say that is not theft. You know, then the danger exists that it becomes a merely verbal question. One can say theft is what? Theft is stealthily taking away what belongs to another man if this taking away is a bad action. But if it is not a bad action we do no longer call it theft. To that extent, you can say, you can maintain the strict prohibition against theft. You know, you can put it this way. But I think it is clearer to say that we mean by theft stealthily taking away and this is, generally speaking, bad but in extreme cases, as the alternative is starvation, war, and so on and so on, it is legitimately changed.

Q: (Inaudible).

S: Yes, well in this case I think it is very simple because if someone would commit incest when so many other people are available then -- I mean, or would you say that someone who is particularly -- so unattractive to the other sex that he couldn't possibly find a partner? In that case we have a case of extreme necessity, but I think -- you mis-stated the problem, by the way, by speaking of sexual relations. The question is procreation. So this limits it also considerably. Yes?

Q2: You were saying that there is no sanction without the divine will. Would you say that this would mean that if God didn't exist that intrinsically bad things wouldn't be worthy of punishment?

S: No, that doesn't mean it at all. It means only they wouldn't be punished. They would be punished only by human beings. For example -- well, let us take a simple example: simple murder is punished in society, as you know, by human beings. But is there another punishment? That's the question. Now that there is a punishment by the conscience is, of course, implied and stated by Thomas Aquinas, but this raises a difficult question which we discussed briefly last time: is the conscience necessarily effective as a punisher or tormentor in all men? You know, that is a question which cannot be empirically settled. You have cases of people who were terrible criminals who did become tormented by their conscience because they said it or it came out. But in other cases we don't know. There are people who are not known to anyone to have committed atrocious crimes and may, for all we can know, live happily ever after. You know, we cannot know it and therefore this is always a difficulty. But Locke later on asserts with the greatest definiteness that the conscience is not generally effective. I mean, in many people but not in all. But the question of divine punishment is no longer something of which natural reason can say something, if I understood Suarez correctly. Natural reason can say it is worthy of punishment, but punishment proper presupposes, of course, the determination of both the quantity and the quality of the punishment and this, natural reason can no longer know.

Q2: (Inaudible).

S: No, the belief in God is absolutely essential. That Suarez I think indicates by the title of his book, On Laws and God the Legislator. And the same is true in Thomas. But the other school, the one wing which says there is no natural law proper because natural reason alone cannot say more than whether

that actions are good or bad and cannot know that they are forbidden or commanded. These people say, to make quite clear what they mean, the natural law as they understand it, meaning the rational insight into goodness and badness, would be valid even if there were no God. This statement, even if there were no God, is well known, is best known, from Hugo Grotius who, at the beginning of his work on The Right of War and Peace, uses the same expression and there are some people who have said, now, here is the beginning of modern natural law because medieval natural law was always theological and here you have the complete divorce of natural law from any theology, revealed or natural. But unfortunately this was said centuries before by some scholastics and therefore it cannot very well be the beginning of a radical break with -- Grotius is fundamentally a traditional thinker. . . . Yes?

Q<sub>3</sub>: (Regarding rewards and punishments in the Thomistic teaching in contra-distinction to their absence in classical natural right teachings).

S: Yes, but this difficulty I'm afraid exists also in Plato and Aristotle because -- what is the argument of Plato's Republic? Is justice choiceworthy for its own sake -- or genuine virtue choiceworthy for its own sake, or not? And the answer, generally speaking, is it is choiceworthy for its own sake. But what kind of justice, what kind of virtue? Answer: the philosopher's virtue, philosopher's justice. So what happens to the non-philosophers? For the philosophers their justice as they understand it is choiceworthy for its own sake, intrinsically pleasant; no need for any other thing. What about the non-philosophers? Well, the non-philosophers derive benefit from their justice -- well, simply in a well-ordered society because there the decent people are assisted by the law and those who are not decent are not assisted, to say the least. But this is not enough because an extremely clever man can behave externally decently and can be fundamentally an unjust man; and he can get all the decorations and distinctions in the world. You know, I mean, you must not believe -- there was once a French comedy about thirty or forty years ago about this sadistic version of the problem of justice. A very harmless tutor educating the son of a very lost woman, an illegitimate son of her, and she was allied with gangsters of all kinds, corrupt politicians, and this innocent man comes and tells this boy that the good men become Presidents of the Republic, presidents of banks, deputies, and so on and so on, and the bad men go to jail and to the gallows. And then he observed how this gangster who corrupted the municipality of Paris very successfully lived in great pleasure; honored, and then he had to revise his moral principles. So, in other words, the justice which we get among human beings -- while I believe it is not as bad as some misanthropists say -- is surely very imperfect. There is no doubt about that; and therefore Plato suggests in the Republic -- you know the myth at the end -- rewards and punishments after death. You see, only what in Plato is mythical -- which does not necessarily mean untrue -- that needs a very long argument -- but clearly not knowable, not really knowable -- this is clear -- becomes accepted and on the basis of belief, faith, which is not the same as myth. Yes?

Q<sub>3</sub>: But isn't this also a dilution of natural right because these men who aren't philosophers -- they're not men -- that is they don't achieve the highest end of men. So because they come down from that, right, natural right, has to be diluted to that extent.

S: No, that is another consideration. Natural right has to be diluted because this natural right in the strictest sense which is impossible except for the philosopher is not applicable to society at large. That is the reason.



That has nothing to do with the question of sanctions. There may be a connection, but this has not yet been made clear by you.

Q<sub>3</sub>: Did Aquinas say, then, that the philosopher --

S: No. The philosopher does not play this role in Thomas Aquinas because ultimately for him the crucial distinction is that between orthodox Christians and people who are not orthodox Christians. Yes, Mr. Dutterworth.

Q<sub>4</sub>: (As to whether the main thrust of Dr. Strauss' interpretation of Aristotle's natural right teaching is based on the discussion in the fifth book of the Ethics).

S: Of my argument; yes.

Q<sub>4</sub>: (Asks about Aristotle's statements in Book II of the Ethics).

S: Yes, because there he doesn't speak of -- first of all, from a quite simple reason: there he does not speak of natural right at all. He indeed says these actions are simply bad, and you cannot, for example, regarding theft raise the question which you can raise regarding borrowing money: how and when can it be done decently and how and when would it not be done decently? Because it would be in all cases indecent. This is clear, but this does not dispose of the other consideration which I mentioned. For example, if you take the case which I gave, say, of this whole commonwealth -- is in danger if the king dies without issue and so you to tell her this is not, so to say, a dirty action.

Q<sub>4</sub>: Except for the fact that he said explicitly that under no --

S: Yes, well, then I can give you an easy reconciliation. Then in this case this would not be adultery because by adultery is simply meant the satisfaction of one's desires without any regard for the rights of others, whereas here this is not, strictly speaking, a satisfaction of desires; it is an action committed for the maintenance of the commonwealth. That would be something different.

Q<sub>4</sub>: Would this then be equal to the distinction between killing one's mother because one thinks that he's forced to do it or simply taking the life --

S: No, that's something different. Then if you say if you kill your mother -- it's a terrible case -- because you think she is a bandit entering your apartment in the dark of the night. You just shoot. I mean, assuming that this would be excusable it would be excusable on the ground that you did not intend to kill your mother but you intended to kill someone whom you had reason to believe was threatening your life. That's clear. Ignorance regarding a fact -- which can be a perfect excuse. No punishable action or no bad action proper is involved. The appearance of a bad action is created only because we do not take into consideration that the man was unable to recognize a true state of things. That takes away the guilt. That is different. Yes?

Q<sub>5</sub>: I somehow missed the connection between the sanctions and virtues that you mentioned some time ago.

S: The virtues are good habits, praiseworthy habits, and they can be choice-worthy for their own sake; and then the question of sanctions for them, or rather rewards for the virtues or punishments for the vices or vicious actions doesn't arise. But there are quite a few people who are not willing to act virtuously unless they get a reward for it. In other words, they do not genuinely believe that virtues are choiceworthy for their own sake. Only in that case does the question of sanctions arise. Now when we speak of laws we are somehow compelled to think of sanctions, as Suarez admits: only he says natural reason cannot say anything about the sanctions for the natural law. In other words, the relation between virtue and vice on the one hand and sanction on the other is that between the intrinsic goodness of virtue or intrinsic badness of vice on the one hand and of extrinsic reward and punishment. That's the connection.

Q<sub>6</sub>: How does natural law become derived out of an understanding of man's nature?

S: Well, let us take the simplest example. If man is by nature a social being, then he is by nature ordered toward society, and this is in itself something which is prior to any virtue and vice and prior to any law. Man is by nature a social animal. His very anti-sociality proves his sociality. I discussed this on a former occasion. I don't know whether you were present. So, for example, if man is anti-social out of desire to be the first this means, of course -- this is possible only in a being which is fundamentally concerned with others of the same species, which is fundamentally social. But if man is ordered toward society, then he must fulfill certain conditions in order to be a social being. These would be the social virtues. In other words; all habits which make possible social life are good, commanded by natural law, and all those habits and actions which by themselves would render society impossible are vices and forbidden; the action is forbidden by natural law. Yes?

Q<sub>6</sub>: Does that imply that the preservation of man's nature is the highest good?

S: Yes. There is a perfection of human nature pointed to by man's nature so that if man is a rational animal, same as a social animal, then the cultivation of his reason is his virtue and the neglect of his reason or the perversion of his reason is a vice. That is what is meant by that. Or take another case we discussed before: procreation. All so-called sexual activities which are not directed toward procreation are, to say the least, questionable activities. Most of them may be bad, whereas they are that which human nature is directed toward. I mean; this is what I meant when I referred, from the very beginning of this course, to the teleological understanding of nature. I mean, according to the simple view, every being, every natural being, has an end toward which it is ordered. Now this is today somewhat complicated because of the physics, modern physics, but in the case of man especially and to some extent also regarding the other animals it is still easily intelligible. The question arises -- one can see the necessity indirectly -- that is a long task but one can do it by considering the alternatives. Let us forget about a natural end of man. Let us deny it on the grounds which are now so common, which are very very common for about three centuries: that there are no natural inclinations. Or differently stated: we cannot make a distinction between good and bad inclinations. A man may have the inclination to drink human blood and that is not distinguishable from an inclination to be kind to other human beings. Both are equally natural. Then you have to find another criterion for distinguishing between good and bad action, and you have to find a basis for that. Is there any other possible basis than human nature for that? I will take that up when I come to speak of modern natural right. But here, to repeat, in the tradition which culminates

in Thomas Aquinas, the teleological understanding of human nature is absolutely crucial. Yes, Mr. Boyan.

Q7: (Regarding a natural inclination toward freedom).

S: Yes, well, I would suppose it -- I would assume that this is subordinated from Thomas -- well, you must distinguish -- freedom has many meanings. Now freedom of the will belongs to man by nature and therefore man cannot help being free, have a free will. This is not what you mean; you mean political freedom. Well, I think that Thomas would regard this as subordinated to the social desire, the desire for living in society, and this means a society cannot be tolerable except if it is a society ordered by law, and in this context freedom would come in. No, and the mere fact that Thomas recognizes the legitimacy of slavery would seem to show that he cannot have recognized an unqualified natural right to freedom.

Q7: When I asked this question regarding Plato you responded by saying Plato recognized freedom as a problem. I wonder if Thomas recognized it even as a problem.

S: Of course the problem cannot exist for Thomas in the same manner because Thomas does not measure all the rights and duties by the philosopher. The problem would be in philosophic terms similar to what it is in Aristotle. Aristotle does not start from the premise that the only right order is that which would obtain among philosophers. So Thomas would, I think, take it for granted that freedom, i.e. not being a slave, is a normal condition for man. But he would not, on the other hand, since he admits the legitimacy of slavery, in one way even going beyond Aristotle by not seeing any difficulty in conventional slavery, what Aristotle calls conventional, i.e. people who are enslaved because they have been taken prisoners in war -- he would say this cannot, surely not have the character of an inalienable right, if that is what you mean. But that a free society is, in the simple political sense, ordered by law and where the people, the common people, are an important part of the legislative body: this he said. You know, in the question dealing with the judicial laws of the Old Testament he states this: that this order he believes he finds there -- kin, elders, and the people, a mixed regime -- is the best, and this means of course very much of what was traditionally understood by political freedom. But the question which we always connect with that is can any human being, except on the basis of crime clearly defined by law, be deprived of his freedom? And here he says yes, because accepting the Roman law teaching that slavery is a benefit introduced by the law of nations in order to prevent the killing of all prisoners taken in battle. Well, do you want to say something on this subject? All right. Then I give you the word.

Q8: Is the distinction between the concept of natural right and the concept of natural law based upon this business of the sanctions?

S: Yes; more precisely: on the presence or absence of command. More precisely: but indirectly on the sanctions. That's really the last question now --

Q9: (Asserting that in the Thomistic treatment of freedom the lower sort of men have less freedom).

S: Well, as authority, sure. But, well, Thomas teaches explicitly that even without sin, in the state of innocence, there would have been natural inequal-



ity. There would not have been slavery, but there would have been an order of higher and lower within the human race. That he teaches explicitly. I mean, in this respect that is just the Platonic-Aristotelian view. In other words, the inequality among men is, to some extent, natural. That does not mean, of course, that the inequality we actually find agrees with the natural inequality. You know: that the kings deserve to be kings and the members of the lowest class deserve to be in the lowest class. This is, of course, not the case because many injustices happen, but that there is a hierarchy within the human race, a natural hierarchy, Thomas asserts: a hierarchy antedating any sin. According to another Christian teaching these inequalities are a consequence of sin. Thomas does not accept that. Now I'm very sorry. I must go on now. We'll make another recess, a break, in a short while.

Now Thomas' doctrine as a whole presents itself as a synthesis of Revelation and Aristotle. The principle is grace perfects nature; it does not destroy it. Nature is what philosophy knows and grace is what is known through Revelation. There is no contradiction. Grace is the perfection of nature; it does not destroy it. And the natural order as Thomas sees it is, very generally speaking, on the whole, as Aristotle saw it. Therefore, Thomas can accept Aristotle's *Ethics* with this understanding: that Aristotle deals here only with the happiness or felicity of this life. He does not speak there of the felicity in the after-life, and which is, of course, much more important.

Now this harmony of Aristotle and the Christian teaching could not be achieved without a genuine conflict with Aristotle because Aristotle, as it were, opposes any supplement to his teaching based on Revelation. He regards that as sufficient. Aristotle's teaching is not open to be supplemented by Revelation, and so the conflict must appear at one point or the other. Now the point where Thomas makes it quite clear is -- concerns the question of creation. Is the visible universe eternal -- Aristotle's teaching -- or has it been created out of nothing, the Biblical teaching? Thomas qualifies this considerably so that it doesn't appear in this sharp form. Thomas believed that it is possible to prove by natural reason that the universe originates in the will of God. But the question arises, does the world emanate, as it were, from the will of God eternally or did it come into being at a given time? And this question, of course, affects quite a few questions in moral philosophy more or less directly.

Now being a synthesis of Aristotle and the Bible, the Thomistic doctrine was exposed to attacks from both sides: from the side of anti-philosophic theologians and from the side of anti-theological philosophers. Both attacks endanger natural law in particular. Now the extreme theological view would say, of course, that nothing is prohibited because it is intrinsically evil but whatever is evil is so only because it has been prohibited by God. The only guidance man has is by Divine Revelation, not by his own reason. Now I would like to speak of two non-Thomistic thinkers, Christian thinkers, none of which is an anti-philosophic theologian but while one of them clearly is an anti-theological philosopher.

I would like to say first a few words about the natural law teaching of Duns Scotus making it clear that I do not know Duns Scotus from the sources. That's the only case where I depend on other people, and I do this with a certain uneasiness. Duns Scotus, the Scot Dun, fourteenth century, late fourteenth century. Now what does he say? The starting point of Thomas, we recall, was this: the will of man tends naturally toward happiness or felicity. This is, of course, also the Aristotelian view. Man's will tends naturally towards

felicity. Duns denies that on the ground of the radical freedom of the will. There is no natural tendency toward felicity, and, in a way, this destroys the whole basis of that teaching. This emphasis on the freedom of the human will, that there is no natural end corresponds, in Duns' teaching, to a stress on God's will in contra-distinction to his reason or intelligence. Nevertheless Duns Scotus teaches that there is a natural law. The principle of action, and hence the command of natural law, is to love God. For God is the highest good and this is knowable by natural reason. Love God; do not love any creatures. That God is the highest good does not depend on God's will. God cannot will not to be the highest good, whereas everything else can be good only by virtue of the divine will and natural law can only be that which does not depend on the divine will merely. Man's happiness is not as such a good because it is not the highest good. It's a questionable good. The natural good things, more particularly the nature of man -- does not supply any guidance. Love of God must be completely divorced from concern with my felicity, because in that case I love God for my sake. I love the highest good for the sake of a questionable good, which is absurd. Love of God implies, indeed, the willingness to comply with God's will, whatever that will may be, and that will can be known only through Revelation. Only the commandment to love God above everything else is strictly the command of natural law. But when one reads this one can raise the question very well, especially on the basis of Thomas' remarks on this subject, can this be known to natural reason? There is another difficulty mentioned, apparently, by Duns Scotus: this command to love God is always valid, but it is valid semper but not pro semper. Now what does that mean? It is always valid in itself, but it is not valid for every second, so to speak. Now this is a distinction which these later scholastics make. You can easily see: the prohibition against murder is always valid, semper, and is valid also pro semper. There is not a single minute where you can murder. Now then the question arises: if the command is to love God but you can; as it were, not love God in every second, is it sufficient to love God once, so to speak, once in one's life, in order to satisfy, to fulfill, the command? Scotus draws the conclusion that the only natural law, strictly understood, is not to hate God. This is valid semper and pro semper. But, on the other hand, Duns Scotus doesn't seem to be certain whether that forbidden act of hating God is possible at all. So this is not very clear. Yet what about the love of neighbor, the content of the second table of the decalogue? These commandments belong to natural law in the large or loose sense of the term, which means they do not follow strictly from the principle, the prohibition against hating God, but they are very much in agreement with the principle without necessarily following from it.

Now I would like to illustrate this distinction between necessary and much in agreement by an example given by Duns. If peaceful living together is good nothing follows with strict necessity regarding communism or private property because people can live together both communistically or on the basis of private property. But private property agrees more with peaceful living together than does communism. Hence, in the same way, to love the neighbor as a creature of God is more consonant to the love of God than not to love the neighbor. Through loving the neighbor one loves, ultimately, only God himself, meaning as willed by God. I found a strange remark which I'll read to you which he makes when speaking of the indissolubility of marriage. He says it was necessary to establish this indissolubility also by divine positive law, which would seem to mean it is commanded by natural law but it is also established, in addition, by divine positive law, because men obey less to the law of nature than to God commanding, because they fear less their own consciences than the divine authority. Now this, taken by itself, would seem to suggest this view: that the na-

tural law has no other sanction than a man's own consciousness as distinguished from a divine precept. But this is much too -- I mean, I myself know much too little to say more about it. The key point is only that here is a natural law teaching which limits the natural law to one single command, or perhaps only to one single prohibition, against hating God, and all other commands do not, strictly speaking, belong to natural law.

The other post-Thomistic thinker of which I would like to say a few words, whom I happen to know from my own readings, is Marcellus of Padua, in the fourteenth century. Now here is the most radically anti-ecclesiastical writer of the Middle Ages, a so-called imperialist. In the Middle Ages imperialism means to be on the side of the emperor, in opposition to the papalists, those on the side of the Pope. Accordingly, his work (the chief work is called The Defender of the Peace) was of use very much during the Reformation. Now he bases his anti-ecclesiastical teaching, of course, on the New Testament, and he tries to show that there cannot be any ecclesiastical power in any sense on the basis of the New Testament. Well, I must limit myself here to his philosophic teaching. His philosophic teaching is based on Aristotle's Politics but he interprets this in a very strange way. He introduces the notion of the human legislator who is necessarily the people in contra-distinction to the prince or government, a distinction which reminds quite justly of Rousseau's distinction between the sovereign and the government; and it is very strange to find such a doctrine or something reminding of this doctrine in the fourteenth century. So, in other words, at first glance it appears to be much more democratic than Aristotle is. He isolates Aristotle's democratic argument given in the third book of the Politics from the context, which leads to very strange interpretations. I explain this as follows: Aristotle's aristocratic teaching favored the clergy once one accepts the notion of the Christian commonwealth. In the Christian commonwealth the laity is the demos, the populus, the people; and therefore the Aristotelian argument, simply applied to the Christian commonwealth, leads to an admission of the superior power of the clergy.

Now Marcellus transforms Aristotle into a populist teaching in the interest of his anti-clericalism. Not only scripture but also reason speaks against the rule of the clergy because reason demands that power be in the hand of the citizen body, i.e. of the laity. Well, apply it to the church. Marcellus makes use, considerable use, of Aristotle's teaching regarding priesthood which he accepts as in the main correct, for according to Aristotle, at least by implication, priests have no power to rule in any sense and their only function is to teach. Now Aristotle, of course, never says so but in a deeper sense Marcellus is not entirely wrong because the only part of the commonwealth of which Aristotle speaks which could have the function to teach is the priesthood, no other part. Negatively stated, the philosophers -- and that means, in the older language, also the men of science -- are not a part of the commonwealth. When Aristotle enumerates these parts philosophers never occur. Philosophers are not a part of the polis. That is Plato's view: that they are a part of the city -- not the sober Aristotle's view.

Now let us hear Marcellus about natural law. That is in second part, second treatise we can say, chapter twelve, paragraphs seven to eight. "There is also another division of right and properly of human right into natural and civil. Natural right, according to Aristotle in the fourth book of the Ethics" -- he means the fifth book, the treatise on justice -- "is that statute of the legislator with respect to which almost all men agree that it is honorable and should be observed." Natural right is a statute of the legislator. "Examples



are that God must be worshipped, parents must be honored, children must be reared by their parents up to a certain age, no one should be injured, injuries must be lawfully repulsed (or may be lawfully repulsed) and the like. Although they depend upon human enactment they are metaphorically called natural rights because in all regions they are in the same way believed to be lawful and their opposites unlawful just as the acts of natural things which are devoid of will are everywhere uniform, like fire, which burns here just as it does in Persia. However, there are some men who define natural law as the dictate of right reason in practical matters which they place under divine right for everything done in accordance with divine law and in accordance with the counsel of right reason is lawful in an absolute sense, but not everything done in accordance with human laws since in some things the latter fall away from right reason. But the word natural is used equivocally here and above for there are many things which are in accordance with the dictate of right reason but which are not agreed upon as honorable by all nations, namely those things which are not self evident to all and consequently not acknowledged by all." So this is the key passage of Marcellus regarding natural law. Now what does he say? How can we summarize it?

Marcellus denies that there is natural law, properly so-called. He takes it for granted that reason knows no other legislator than man and hence that all laws, properly so-called, are human laws. Reason is indeed capable of discerning what is honorable and what is just and what is of advantage to society, but such insights are not as such laws. Besides, they are not accessible to all men and hence not admitted by all nations. For this reason they cannot be called natural. They lack the universal recognition which a natural law would require. But on the other hand there are certain rules regarding what is honorable or just which are admitted in all regions and are, in addition, enforced almost everywhere. These rules can therefore be called metaphorically natural rights. They are not strictly speaking natural rights because they are ultimately based on human enactments, but in a loose way, in a metaphoric way, they can be called natural rights. In spite of their being universally or generally admitted they are not, strictly speaking, natural. Why? Because they are not dictated by right reason. In brief, his argument is this: what is universally admitted is not rational and what is rational is not universally admitted.

Among the rights which can be metaphorically called natural rights Marcellus mentions the rule that human offspring must be reared by the parents up to a certain time. Why is this not unqualifiedly rational? I would say, since Aristotle had held that no deformed child should be reared and therefore the simple rule is not rational. But more generally, according to Marcellus wars are by nature necessary, wholly independently of human ill will, in order to prevent overpopulation. Now if this is so, if this is the primary reason for war, not the bad will of governors or the injustice of rulers, then the distinction between just and unjust wars loses much of its force and this grave qualification of the field of justice is bound to have effects also within society. The universally admitted rules of right are not rational since there exists the natural necessity to transgress them, and therefore they are only qualifiedly valid. In other words, what is ordinarily understood by natural right are generally accepted conventions. This convention arises separately in each society because of fundamentally the same necessity which arises whenever men live together. It is not due to a universal convention of the human race. But this does not do away with its conventional character. I think this is what Marcellus means. Now this is all I wanted to say about these things. Yes?

Q: (Inaudible).

S: You can say. Yes. Yes. All the principles of right which are of general intelligibility and usefulness are conventional. Yes. The rational right, that what human reason would discern as wise and just is as such not universally valid because most men would not see it. That he seems to say.

Q: (Inaudible).

S: Yes, it reminds of the Platonic teaching. Yes. Without any apparent connection with the Platonic teaching. Yes?

Q<sub>2</sub>: Would Aristotle say that natural right is that which is universally valid -- that is, the same thing that is the dictate of practical reason. In other words, would all dictates of practical reason be universally valid and therefore natural right for Aristotle? Would the two be one and the same?

S: Well, let me --

Q<sub>2</sub>: Would it be possible for some dictate of reason not to be natural right because it's not everywhere --

S: Well, it must not be taken in a pedantic way. The exception, you can say, proves the rule. But Aristotle would say why do tyrannies -- do they have to be so particularly bloody and cruel and why do they not last -- why do they last ordinarily not very long? Because they contradict certain principles of human living together which are principles of natural right.

Q<sub>2</sub>: In general the two go together for Aristotle.

S: Which two?

Q<sub>2</sub>: All dictates of practical reason would be evident. You would see them. They would be everywhere in force --

S: Yes, well, that is a complicated question because there are underdeveloped nations, as Stalin would call them. You know? I mean, people who have no development of sciences and art, and therefore also all the more refined understanding of human goodness would be absent. To that extent it is not universal. But Aristotle would say wherever a man of practical wisdom, high practical wisdom, lives he would act according to these principles. That he would say. Yes? Mr. Erickson.

Q<sub>3</sub>: (Regarding the distinction between the doctrines of Marcellius and Hume).

S: Well, cutting out some of the terms used by you if I may be permitted to do so, I can understand. But Hume does not, I believe, explicitly speak of metaphorically. He says --

Q<sub>3</sub>: No. They are arbitrary; they are conventional.

S: Yes. He says, in other words, if I remember well, certain rules may be called natural.

Q<sub>3</sub>: Yes; I think I can quote him literally. In the sense that they are inseparable.

arable from a given. . . . (rest inaudible)

S: Yes. I think I would agree with you; contrary to most present day admirers of Hume, I think that Hume, for all practical purposes, admitted a natural right. That is quite true. Yes, but there is one absolutely striking difference. For Hume everything centers around property and Marcellius didn't speak of property except by implication. This is quite true. They agree by saying in a loose way it is possible and even necessary to speak of natural right. But the content of the natural right is so different. We must not forget that. Well, that is a parallel problem to that raised by the fact that Marcellius' political teaching regarding the human legislator and the prince reminds so much of Rousseau. That one is tempted to say here in the fourteenth century you have Rousseau's teaching, and closer inspection shows that this is not so, that this was, as it were, a temporary device for Marcellius in his fight against ecclesiastical power to ascribe to the laity the ecclesiastical power; and therefore he had to have an underpinning in a democratic teaching regarding civil society. It is not seriously meant, in other words, here.

Q<sub>3</sub>: (Inaudible).

S: I question the facts. I do not know that Hume never uses the word metaphorically. I would be inclined to believe that he does use it, but this is a matter of mere fact and nothing like having another look at it. I don't know it offhand but I would assume that Hume would use it as well as everybody else and I'm sure in some of the essays when he speaks of taste and of art he cannot have helped, have made some remarks about the use of metaphors, and so, metaphorically. I wouldn't go so far.

Q<sub>3</sub>: (Inaudible).

S: But did Hume ever say that taste or art, for that matter, is the same as science? No. This remark which you alluded to refers to science. No science without

Q<sub>3</sub>: (Inaudible).

S: Well, now, may I suggest this practical consideration: we cannot now take up Hume. Yes? Good. Yes?

Q<sub>4</sub>: Do I understand you correctly in your reply to Mr. Erickson that there is some sort of necessary relationship between Marcellius' anti-clericalism or his anti-clerical intentions and his denial of the natural law?

S: Not directly. No. No.

Q<sub>4</sub>: Something about establishing the democratic thesis --

S: No, in a wider sense. Marcellius is, of course, officially a Christian. I mean, he argued on this basis. But in fact he is an Aristotelian of that camp called Averroism. This is by the way generally known. You know, that spread from the faculty of arts in Paris and such people. I mean, on the basis of this damned Aristotelianism of the Averroists he had no use for natural law in the Thomistic sense. That is not an Aristotelian teaching proper. Therefore the question becomes all the more urgent. Why does he not reproduce



the Aristotelian teaching that there is an unmetaphoric natural right which may be changeable but which is surely natural. This is the real difficulty which Marcolius poses. Now I do not have my text here. It is, of course, no explanation but I think he simply follows the Averroist interpretation and that means only pushing the question back because Averroes surely admitted that, say, commutative and distributive justice, these principles, are natural, naturally right, and not conventional. But I believe the question comes up when you put it in this form: are the rules without which a society is not possible, the overall principles -- are they natural? I mean, not limiting ourselves to justice in the narrow sense: commutative and distributive justice. And I think here the question comes in -- for example, the worshipping of God, as he puts it, which Aristotle, as we have seen, implied also in his statement on natural right in the fifth book of the *Ethics*. And here the question comes in: to what extent is the worshipping of God a demand of natural reason, the worshipping of God as distinguished from knowing God? You know, then you come up immediately against the question: must it be worshipping of God, the true God, alone? That's the practical, crucial question. Or of any gods? Now if you say any gods, as Aristotle would have meant, then, of course, the question of truth and untruth comes up immediately. We have discussed it in another connection. And then it cannot be, strictly speaking -- in one sense it is rational; in another sense it is not rational. Do you see? In one sense society requires worship, but since this worship if understood implies certain assertions regarding the gods which assertions are not necessarily true, to that extent it is not rational. This, I believe, is the major point why these Averroists, in particular Marcolius, hesitate to speak of natural right simply. I believe, as far as I know from other writers of this time, they would have had no hesitation to say that the principles of commutative justice are sound principles and not conventional, but then the difficulty which arises on that score is this: what about the cases of conflict between commutative justice and the preservation of the commonwealth? You know, and then you have two principles of justice: the common good, in the sense of the preservation of society, and the specific rules of justice. Which has the right of way? And it is very hard to -- any decision in general terms is untenable because one cannot possibly say how far a society must go in being strictly just in the relations of citizens. You know? And then the point arises where this becomes impossible. I believe considerations of this kind are underlying it. I mean, Averroes was, of course, an Islamic philosopher and in this Islamic tradition natural right and natural law simply do not occur; I mean, although they have Aristotle, but they did not have Cicero and the Roman law. Surely this was completely absent. And I think one must see Marcolius as one of the most extreme representatives, and surely the best known representative because -- his books were printed, to the extent to which they are printed, only in our century. You know, whereas he was printed already in the sixteenth century; if I remember well, at the command of Henry VIII after his break with Rome, and it was translated into English.

Now I would like only to indicate what I plan to do. I would like to turn next time to modern natural law: meaning, this natural law which was so powerful in the seventeenth and eighteenth centuries, and we must see, we must make clear, that there is a fundamental difference between the natural law of the seventeenth, eighteenth, century, and that of pre-modern natural law. I plan to take up this subject next Monday.

(In the last four lectures of the course, Dr. Strauss repeated material on which he has already written or lectured in substantially the same form and content. Therefore, these lectures will not be transcribed.)